



REPORT TO CITY COUNCIL

DATE: NOVEMBER 8, 2017

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: RAMIRO ADEVA, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER 

SUBJECT: APPROVE THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF AGOURA HILLS AND SDG ASSOCIATES, LLC, FOR PROPERTY LOCATED ON ROADSIDE DRIVE, WEST OF ROADSIDE ROAD

This report seeks approval of a purchase and sale agreement between the City of Agoura Hills and SDG Associates, LLC, for the sale of vacated street property located on Roadside Drive, west of Roadside Road.

The land was originally right-of-way acquired by the State of California in conjunction with the U.S. 101 Freeway for fee ownership. After construction was completed, the State transferred the excess right-of-way to the County of Los Angeles, which was eventually inherited by the City upon incorporation.

With the sale of the land, SDG Associates, LLC, would construct a private driveway for Fire Department access to the adjacent fitness facility; provide ingress/egress to the adjacent property to the west, and install new landscaping along the freeway corridor.

Based on the current condition and proposed use of the property, staff is recommending that the City Council establish the fair market value of the land at \$175,000. The proposed purchase and sale agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council: approve

1. Approve the purchase and sale agreement between the City of Agoura Hills and SDG Associates, LLC, for the property on Roadside Drive, west of Roadside Road in the amount of \$175,000; and
2. Authorize the City Manager to sign the purchase and sale agreement, and grant deed on behalf of the City; and
3. Authorize the City Clerk to forward the grant deed to the Los Angeles County Recorder's Office for recording.

Attachments: Purchase and Sale Agreement
Grant Deed

**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of November 8, 2017 and is entered into by and between the CITY OF AGOURA HILLS, a California municipal corporation ("Buyer"), and SDG ASSOCIATES, LLC, a California limited liability company ("Seller").

In consideration of the sum of \$5.00, the mutual covenants and terms hereinafter set forth, and other consideration, the sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. SALE AND PURCHASE PRICE.

1.1 Sale and Purchase. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the real property in the City of Agoura Hills, County of Los Angeles, State of California, described on Exhibit "A" attached hereto (the "Property"), for the price and upon the terms and conditions hereinafter set forth.

1.2 Purchase Price. The purchase price ("Purchase Price") for the Property shall be One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00).

1.3 "As Is" Sale. Subject to Buyer's rights under the Title Policy described in Section 2.1 below and subject to Section 2.2 below, Buyer shall accept the property in its "As Is" condition, without representation or warranty, express or implied.

2. TITLE.

2.1 General. Title to the Property shall be conveyed by grant deed and shall be evidenced by an CLTA owner's title insurance policy ("Title Policy"), issued by Lawyers Title Insurance Company, 2751 Park View Court, Suite 241, Oxnard, CA 93036, Attn: Shirley Franks, (Escrow Officer; (805) 484-2701, ext. 275; sfranks@ltrc.com); Neal Palacio (Title Officer; (800) 726-2949; npalacio@ltrc.com) ("Title Company" or, in its capacity as escrow agent hereunder, the "Escrow Holder"), with liability in the full amount of the Purchase Price, insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters affecting title to the Property, except for title exceptions approved in writing by Buyer prior to the end of the Due Diligence Period as defined in Section 3 below (and Buyer may terminate this Agreement prior to the end of the Due Diligence Period if any matter affecting title is not acceptable to Buyer).

2.2 Acts After Date of Agreement to Closing Date. During the period from the date of this Agreement through the Closing Date (defined in Section 4.3 below), Seller shall not improve or otherwise alter the Property, or record or file for record (or permit to be recorded or filed for record) any document or instrument which will affect the Property, without the prior written consent of the Buyer.

3. RIGHT OF ENTRY; DUE DILIGENCE; RELEASE.

3.1 Title Report. Buyer acknowledges receipt of a preliminary report for the Property from the Title Company. Buyer shall deliver it to Seller with copies of (or hyperlinks to) all title exception documents described therein.

3.2 Right of Entry; Due Diligence; Indemnity. Seller hereby grants Buyer and its agents, employees and contractors (collectively "Representatives") the right to review title and to enter onto the Property until November 17, 2017 (the "Due Diligence Period") for the purpose of preparing an ALTA survey, performing physical inspections (including conducting soils and geological investigations) and testing for toxic or hazardous substances and other contamination. If Buyer is not satisfied with the title to or physical condition of the Property, the Buyer may terminate this Agreement by written notice to Seller given prior to the end of the Due Diligence Period.

Buyer shall defend, protect, indemnify, and hold free and harmless Seller from and against any and all claims, liabilities, losses, damages, costs and expenses arising or claimed to arise, out of, or in connection with: (i) the entry upon the Property by Buyer and Buyer Representatives pursuant to this Section 3, or (ii) any failure by Buyer or any tenant of the Property to comply with applicable law with respect to the construction of improvements on the Property or payment therefor after the Close of Escrow. Buyer's obligations under the preceding sentence shall survive the Close of Escrow.

3.2.1 Release by Buyer. Except to the extent of any failure by Seller to disclose to Buyer a fact which, to the knowledge of the City Manager of the Seller, is material and relates to the presence of hazardous materials on the Property, and except for releases of hazardous materials by Seller after completion of Buyer's investigation of the Property, Buyer and anyone claiming by, through or under Buyer hereby waives its right to recover from and fully and irrevocably releases Seller, and its councilmembers, officers, employees, representatives, agents, servants, attorneys, successors, and assigns (collectively, the "Released Parties") from any and all claims, responsibility, and/or liability that Buyer may now have or hereafter acquire against any of the Released Parties for any costs, losses, liabilities, damages, expenses, or causes of action arising from or related to (i) the physical condition of the Property, including the presence of hazardous materials, and any defects, errors, omissions, or other conditions, latent or otherwise, or (ii) the value, salability, or utility of the Property or the suitability of the Property for any purpose whatsoever. This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release of the Released Parties. In connection therewith, Buyer specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

In this connection, Buyer hereby acknowledges that factual matters now unknown to it may have given or may hereafter give rise to claims, liabilities, damages, losses, and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge, and acquit the Released Parties from any such unknown claims, liabilities, damages, losses, and expenses as a material portion of the consideration given to Seller by Buyer for the Property.

Buyer hereby agrees that, if at any time after the Close of Escrow any third party seeks to hold any Released Party responsible for any matters within the scope of the release set forth in this Section, Buyer shall not: (i) implead any of the Released Parties; (ii) bring a contribution action or similar action against any of the Released Parties; or (iii) attempt in any way to hold any of the Released Parties responsible with respect to any such matter. The provisions of this Section shall survive the Close of Escrow.

BUYER'S INITIALS

4. ESCROW.

4.1 Escrow Instructions. This Agreement shall constitute escrow instructions. The parties shall execute such further instructions as Escrow Holder reasonably requires in order to clarify the duties and responsibilities of Escrow Holder. In the event of any conflict between the terms and conditions of this Agreement and such further escrow instructions, the terms and conditions of this Agreement shall control.

4.2 Opening of Escrow. Buyer and Seller shall open an escrow with the Escrow Holder within five (5) business days after the date of this Agreement by depositing an executed copy or executed counterparts of this Agreement with Escrow Holder and requesting that an escrow be opened.

4.3 Close of Escrow. Provided all of Seller's and Buyer's obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close on or before November 21, 2017 ("Closing Date"); provided, however, that the foregoing shall not prohibit Buyer and Seller from closing earlier if they so desire. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer upon the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the close of escrow.

4.4 Buyer's Deliveries. On or before the date that is at least one (1) business day prior to the Closing Date, Buyer shall deposit into escrow the following (properly executed and acknowledged, if applicable):

4.4.1 The Purchase Price;

4.4.2 All other documents and funds contemplated by this Agreement and required by Escrow Holder to be deposited by Buyer to carry out this Agreement.

4.5 Seller's Deliveries. Before the date that is at least one (1) business day prior to the Closing Date, Seller shall deposit into escrow the following (properly executed and acknowledged, if applicable):

4.5.1 A grant deed conveying the Property to Buyer (duly executed and acknowledged) in the form attached hereto as Exhibit "B";

4.5.2 If required by Escrow Holder, executed Federal and State non-foreign affidavits with respect to Seller; and

4.5.3 Any other documents contemplated by this Agreement or required by Escrow Holder or the Title Company to be deposited by Seller to carry out the transaction described in this Agreement.

4.6 Conditions to the Close of Escrow. Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

(i) Seller shall have performed all agreements to be performed by Seller hereunder;

(ii) As of the Closing Date, there shall have been no adverse changes in the physical condition of, or title to, the Property;

(iii) Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price, showing fee title to the Property to be vested in Buyer, subject only to such title exceptions as have been approved by Buyer and with no exceptions for unpaid property taxes or assessments or other monetary liens (such as deeds of trust or judgment liens).

Escrow Holder, upon notice by Buyer of a failure of a condition shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less the amount of any charges required to be paid under Section 4.9 below).

4.7 Recordation of Grant Deed; Delivery of Funds. Upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Los Angeles County, California, and shall deliver the purchase price (less appropriate charges) to Seller.

4.8 Prorations. All property taxes and assessments shall be prorated between Buyer and Seller as of the close of escrow based on the latest available assessment information. Seller is exempt from property taxes; consequently, Seller shall not be obligated to pay any property taxes not yet due.

4.9 Costs.

4.9.1 Buyer shall pay:

- (i) Half of all escrow fees and costs (subject to Section 4.11 below);
- (ii) The cost of extended coverage title insurance premiums (if any) and the cost of any survey performed by Buyer.

4.9.2 Seller shall pay:

- (i) One half of all escrow fees and costs (subject to Section 4.11 below);
- (ii) The cost of standard coverage (CLTA) title insurance for Buyer;
- (iii) All recording charges and documentary transfer taxes, if any; however, the parties acknowledge that the deed should be exempt from recording charges.

4.10 No Broker's Commissions. Buyer and Seller represent to one another that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Each party shall indemnify, defend, protect and hold harmless the other, from and against all claims of any agent, broker, finder or other person or entity arising from or in connection with its communications or agreements with any such agent, broker, finder or similar person or entity in connection with the transaction described herein.

4.11 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (½) of all escrow and title cancellation charges.

5. ATTORNEYS' FEES. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

6. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express for overnight delivery, duly addressed to the parties as follows:

<u>To Seller:</u>	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attn: City Manager
<u>To Buyer:</u>	SDG Associates, LLC c/o Selleck Development Group, Inc.

30770 Russell Ranch Road, Suite 1
Westlake Village, CA 91362
Attn: Daniel F. Selleck

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party and to Escrow Holder as herein provided.

7. ASSIGNMENT. Neither this Agreement nor any interest herein may be assigned by either party without the prior written consent of the other party.

8. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

9. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

10. ENFORCEMENT OF AGREEMENT BY BUYER. It is agreed that the rights granted to Buyer by Seller hereunder are of a special and unique kind and character, and that, if there is a breach by Seller of any material provision of this Agreement, Buyer would not have any adequate remedy at law. It is expressly agreed, therefore, that Buyer's rights hereunder may be enforced by an action for specific performance and such other equitable or legal relief as is provided under the laws of the State of California.

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

12. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

13. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

14. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or materially impedes the ability of either party to perform its obligations under this

Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten (10) business days after the party giving such notice becomes aware of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

15. ADDITIONAL DOCUMENTS; FURTHER ASSURANCES. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further reasonable documents that may be reasonably necessary to carry out the provisions of this Agreement.

16. CITY MANAGER AUTHORITY. The City Manager of Seller shall have the authority to give all consents and approvals and notices hereunder on behalf of City, and may enter into non-substantial amendments of this Agreement, provided they are in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BUYER:

SDG ASSOCIATES, LLC,
a California limited liability company

By: _____
Print Name: _____
Title: _____

SELLER:

CITY OF AGOURA HILLS,
a municipal corporation

By: _____
Print Name: _____
Title: _____

Attest:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Richards, Watson & Gershon

By: _____
Bruce Galloway

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Those portions of Parcels 3 and 4, in the County of Los Angeles, State of California, as per Licensed Surveyors Map filed in Book 15, Pages 8 and 9 of Records of Survey, in the Office of the County Recorder of said County, more particularly described as follows:

Those portions of said Parcels 3 and 4, bounded on the South by the southerly line of Instrument No. 281 O.R., the southerly line of Deed per Book D5332, Page 82 O.R. and the southerly line of Deed per Book D5589, Page 115 O.R. and bounded on the North by the Caltrans southerly Right-of-Way per Monumentation Map LA-101M 35.5, File No. FM21558-1 and bounded on the East by the future Right-of-Way of Roadside Road, to be determined.

EXHIBIT "B"

FORM OF GRANT DEED

(Attached.)

Recording Requested By,
and When Recorded, Mail To
(and Mail Tax Statements to):

SDG Associates, LLC
30770 Russell Ranch Rd., Suite 1
Westlake Village, CA 91362
Attn: _____

APNs: Portions of 2061-004-005, 035 and
036

(Space above this line reserved for Recorder's use)

This instruction is exempt from Recording Fees (Govt. Code Section 27383).

Documentary Transfer Tax is \$192.50. Property is in the City of Agoura Hills, County of Los Angeles, California.

GRANT DEED

The CITY OF AGOURA HILLS ("Grantor") hereby grants to SDG ASSOCIATES, LLC, a California limited liability company, that certain real property in the City of Agoura Hills, County of Los Angeles, State of California described on Exhibit "A" attached hereto (the "Property"), subject to all matters of record and all matters that a reasonable physical inspection would reveal.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on _____, 2017.

GRANTOR:

CITY OF AGOURA HILLS,
a California municipal corporation

By: _____

Print Name: _____

Title: _____

Exhibit "A"

Legal Description of Property

Those portions of Parcels 3 and 4, in the County of Los Angeles, State of California, as per Licensed Surveyors Map filed in Book 15, Pages 8 and 9 of Records of Survey, in the Office of the County Recorder of said County, more particularly described as follows:

Those portions of said Parcels 3 and 4, bounded on the South by the southerly line of Instrument No. 281 O.R., the southerly line of Deed per Book D5332, Page 82 O.R. and the southerly line of Deed per Book D5589, Page 115 O.R. and bounded on the North by the Caltrans southerly Right-of-Way per Monumentation Map LA-101M 35.5, File No. FM21558-1 and bounded on the East by the future Right-of-Way of Roadside Road, to be determined.

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 Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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 _____ (Seal)