



REPORT TO CITY COUNCIL

DATE: DECEMBER 11, 2019
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: GREG RAMIREZ, CITY MANAGER 
BY: RAMIRO ADEVA, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER 
SUBJECT: REQUEST FOR APPROVAL OF DONATION AGREEMENT FOR ACQUISITION OF ASSESSOR'S PARCEL NUMBERS 2061-032-023 THROUGH 027

Before the City Council is a request to approve a donation agreement between the City and Creekside Terrace, LP, which will provide to the City, at no cost, five parcels equaling approximately 15 acres of land, currently zoned under the Agoura Village Specific Plan (AVSP). Refer to the attached exhibit for reference.

The properties exist along the south side of Agoura Road, west of Kanan Road. Zoning designation for the parcels is noted in the AVSP, and is as follows:

APN Number	Zone per AVSP
2061-032-023	Zone B
2061-032-024	Zone F
2061-032-025	Zone F
2061-032-026	Zone F
2061-032-027	Zone F

One important distinction to make between Zone B versus Zone F is that the AVSP allows residential land uses in Zone B, and does not allow residential land uses in Zone F. Furthermore, effective January 1, 2020, state law will prohibit the ability for land-use zones to be altered in any way that decreases or eliminates the housing allowances that a parcel of land is zoned for. As a result, should the council desire at some future time to re-zone the acquired parcels to open space, that would be possible for those parcels designated as Zone F, but not possible for the parcel designated as Zone B.

Acquiring these parcels for no cost is not only an ideal fiscal opportunity, but allows the City to control the property indefinitely. It may also be a location where additional oak trees may be planted to aesthetically enhance areas within Agoura Village.

A Phase 1 environmental analysis is currently underway on the property, with results expected later this month. There have been no known structures on this property, nor any disturbance to the land, and thus, the City is optimistic that no further due diligence will be required once the Phase 1 analysis concludes.

Although it is not anticipated that there will be any significant maintenance costs related to the property, should the Los Angeles County Fire Department determine that brush clearance is necessary, the costs would be absorbed in the City's landscape maintenance budget. Costs could be eliminated in the future, should the City Council choose to, ultimately, deed the subject land to a non-profit group, dedicated to preserving large areas of open space and utilizing the land for passive recreational activities, such as the Mountains Restoration Trust or Santa Monica Mountains Conservancy.

Staff has drafted the attached agreement that will allow for the City to acquire these parcels via donation. The agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

City staff is recommending the City Council:

1. Approve the Donation Agreement, and
2. Authorize the City Manager to sign the agreement and all related documents pursuant to Section 16 of the Agreement, which provides the City Manager of Donee 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.

Attachments: (A) Donation Agreement
(B) Location Map

ATTACHMENT “A”

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement") is dated as of December 11, 2019 (the "Agreement Date") and is entered into by and between the CITY OF AGOURA HILLS, a California municipal corporation ("Donee"), and CREEKSIDE TERRACE, LP, a California limited partnership ("Donor").

In consideration of the mutual covenants and terms hereinafter set forth, and other consideration, the sufficiency of which is hereby acknowledged, Donee and Donor hereby agree as follows:

1. DONATION. Donor agrees to donate to Donee and Donee agrees to accept from Donor the real property in the City of Agoura Hills, County of Los Angeles, State of California, bearing APN 2061-033-016 and described on Exhibit "A" attached hereto (the "Property"), upon the terms and conditions hereinafter set forth.

2. TITLE.

2.1 General. Title to the Property shall be conveyed by quitclaim deed. Donee shall have the right to obtain a CLTA owner's title insurance policy ("Title Policy"), issued by First American Title Company, 777 South Figueroa St., Suite 400, Los Angeles, CA 90017 ("Title Company" or, in its capacity as escrow agent hereunder, the "Escrow Holder"), with liability in the amount of \$7,285,000.00 (the "Insured Amount"), insuring title to the Property as vested in Donee, free and clear of all liens and encumbrances other than the Approved Title Conditions (as defined in Section 3 below). The parties acknowledge and agree that the Insured Amount was determined by the Donee in its sole and absolute discretion.

2.2 Acts After Date of Agreement. During the period from the date of this Agreement through the Closing Date (defined in Section 4.3 below), Donor 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 without the prior written consent of the Donee, unless caused by Donee.

2.3 Condition of Property. Donor represents and warrants to Donee that Donor has disclosed to Donee all material facts known to Donor regarding the Property. Subject to the foregoing, Donee acknowledges that it is acquiring the Property in its "as-is" present physical condition with absolutely no obligation on the part of Donor to make any repairs or otherwise take any corrective or remedial action whatsoever. Donee acknowledges that it has inspected the Property and that it consists solely of raw unimproved land and further that there are other governmental agencies or bodies that may have imposed restrictions or prohibitions on the future use or development of the Property. Donor makes no warranties or representations whatsoever concerning the condition of the Property or the potential, if any, for its future use, development, or improvement.

3. DOCUMENTS AND INSPECTIONS; TITLE REVIEW; RIGHT OF ENTRY.

3.1 Seller Documents. Prior to the Agreement Date, Donor represents that Donor delivered to Donee copies of any and all material reports, documents, studies and

agreements in Donor's possession or control that relate to the Property, including, without limitation, those documents listed on Exhibit "C" attached hereto, and Donee acknowledges receipt of the documents described on Exhibit "C".

3.2 Title Review. Donee shall have the right to disapprove Preliminary Report NCS-676198-LA2 issued by the Title Company for the Property and any title exceptions, (including any title exceptions shown by a survey) and terminate this Agreement based on such disapproval by written notice to Donor given prior to the end of the Inspection Period (defined below).

3.3 Inspection; Inspection Period. During the period from the date of this Agreement until December 30, 2019 (the "Inspection Period"), Donee may conduct, at Donee's sole expense, such inspections and testing of the Property and obtain and review a survey of the Property, including any improvements thereon, soils and ground water, as Donee may desire or deem appropriate, in Donee's sole discretion, to determine the suitability of the Property for Donee's ownership and use. In conducting such inspections and testing, the Donee shall, in the event escrow fails to close, return the Property, including the improvements thereon, if any, to its condition prior to Donee's inspections and testing. Donor hereby grants to Donee and its employees, representatives, agents and contractors, permission and a license to enter upon the Property at all reasonable times prior to the end of the Inspection Period for the purpose of conducting such inspections and testing. Donee shall indemnify, protect, defend and hold Donor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising caused by, Donee's entry upon the Property or the performance of any inspection or test conducted by or at the request of Donee or its contractors or agents (but not the results thereof). In the event Donee determines the Property is not suitable, then Donee may terminate this Agreement by written notice to Donor given prior to the end of the Inspection Period.

4. ESCROW; CLOSING.

4.1 Escrow Instructions. This Agreement shall constitute escrow instructions to Escrow Holder for the transaction described herein. 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. Promptly after their execution of this Agreement, Donor and Donee shall deliver a copy of this Agreement to Escrow Holder and open escrow with Escrow Holder.

4.3 Close of Escrow. Provided all of Donor's and Donee's obligations to be performed on or before Closing (defined below) have been performed and all the conditions to the Closing set forth in this Agreement have been satisfied, escrow shall close on December 31, 2019 ("Closing Date"); provided, however, that the foregoing shall not prohibit Donee and Donor from closing earlier if they mutually so desire. All risk of loss or damage with respect to the Property shall pass from Donor to Donee upon the Closing. Possession of the Property shall be delivered to Donee upon the Closing. As used herein, the term "Closing" shall mean the date

on which a fully executed and acknowledged original of the Deed (defined below) is recorded in the Official Records of Los Angeles County, California.

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

4.4.1 A Certificate of Acceptance (for the Deed), duly executed and acknowledged, in the form attached hereto as part of Exhibit "B";

4.4.2 A letter signed by the Donee acknowledging receipt of the donation of the Property for no consideration, in the form of Exhibit "D" attached hereto (the "City Acknowledgment Letter"), along with a duly completed and executed Part IV of IRS Form 8283 as pertains to the Property described herein;

4.4.3 All other documents and funds contemplated by this Agreement and required by Title Company to be deposited by Donee to carry out this Agreement.

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

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

4.5.2 If required by Title Company, executed Federal and State non-foreign affidavits with respect to Donor; and

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

4.6 Conditions to the Closing. Donee'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 Donee's benefit and may be waived only by Donee:

(i) Donor shall have performed all agreements to be performed by Donor 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 Donee, in the amount of \$7,285,000.00, showing fee title to the Property to be vested in Donee, subject only to the Approved Title Conditions and with no exceptions for delinquent property taxes or assessments or other monetary liens (such as deeds of trust or judgment liens).

Donor'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 Donor's benefit and may be waived only by Donor:

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

(ii) The Close of Escrow, the recording of the Deed and delivery of the Donee's Deliveries (set forth in Section 4.4 above) to Donor shall have occurred by no later than the Closing Date.

Escrow Holder, upon notice by Donee or Donor of a failure of a condition shall promptly return to Donee all documents deposited by Donee in escrow and to return to Donor all documents deposited by Donor 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). Donee acknowledges that if the Closing has not occurred by the Closing Date for any reason, this Agreement shall terminate, Escrow Holder shall return the funds and documents to the respective parties as set forth above.

4.7 Recordation of Deed. Upon receipt of the instruments described in this Section 4 and Title Company being irrevocably committed to issue the Title Policy, Title Company shall cause the Deed (with Certificate of Acceptance) to be recorded in the office of the County Recorder of Los Angeles County, California and shall deliver to the Donor all of the documents described in Paragraph 4.4. hereof (but only copies, not originals, of any recorded documents, as the originals will be recorded).

4.8 Prorations. All assessments shall be prorated between Donee and Donor as of the Close of Escrow based on the latest available assessment information. Donee is exempt from property taxes; consequently, those shall not be prorated, but Donee will cooperate with Donor after the Close of Escrow (including taking such further actions and signing further documents), if requested by Donor, to assist Donor in obtaining a refund of any property taxes overpaid by Donor. Donee's obligations under this Section 4.8 shall survive the Close of Escrow and shall not be merged into the Deed.

4.9 Costs. Donee shall pay the title insurance premiums and the cost of any survey performed by Donee and all escrow charges, recording charges and documentary transfer taxes, if any; however, the parties acknowledge that the Deed should be exempt from recording charges and transfer taxes.

4.10 No Broker's Commissions. Donee and Donor 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.

5. ATTORNEYS' FEES. In any action between Donee and Donor 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, or sent by the email addresses specified below provided a hard copy of the email is sent by one of the other delivery methods herein within one (1) business day (unless the email recipient affirmatively indicates in a return email that he/she received the email):

To Donee: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: Greg Ramirez, City Manager
Email: gramirez@ci.agoura-hills.ca.us

To Donor: Creekside Terrace, LP
4458 Matilija
Sherman Oaks, CA 91423
Attn: Bruce F. Whizin
Email: bofc@whizin.net

with a copy to:

Marc Jacobs, Esq.
12400 Wilshire Blvd., Suite 800
Los Angeles, CA 90025
Email: mpjacobs@earthlink.net

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 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 DONEE. It is agreed that the rights granted to Donee by Donor hereunder are of a special and unique kind and character, and that, if there is a breach by Donor of any material provision of this Agreement and the Closing fails to occur as a result thereof, Donee would not have any adequate remedy at law. It is expressly agreed, therefore, that if the Closing does not occur due to a breach by Donor that is not cured within ten (10) days following Donee's delivery of written notice to Donor of such breach from Donee, then, as Donee's sole and exclusive remedy, Donee may seek specific performance of Donor's obligation to convey the Property to Donee by Donee's City Manager providing written notice to Donor not more than thirty (30) days after the Closing Date and Donee's filing an action within ninety (90) days thereafter. Donee waives the right to damages.

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 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.

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 Donee 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.

17. GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

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

DONOR:

CREEKSIDE TERRACE, LP, a California limited partnership

By: Creekside, Inc., a California corporation Its General Partner

By: _____
Print Name: _____
Title: _____

DONEE:

CITY OF AGOURA HILLS, a municipal corporation

By: _____
Print Name: _____
City Manager

Attest:

Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

Richards, Watson & Gershon

By: _____
Candice K. Lee,
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

The land in the City of Agoura Hills, County of Los Angeles, State of California, described as follows:

PARCELS 3 THROUGH 7, INCLUSIVE OF PARCEL MAP NO. 73033, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 383, PAGES 58 TO 73 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBONS SAVED AND SOLD FROM SAID LAND, AS RESERVED BY ESER WIKHOLM ET UX., IN DEED RECORDED DECEMBER 30, 1953, IN BOOK 43495, PAGE 30, OFFICIAL RECORDS.

APNS: 2061-032-023; 2061-032-024; 2061-032-025; 2061-032-026 and 2061-032-027

EXHIBIT "B"

FORM OF QUITCLAIM DEED (WITH FORM OF CERTIFICATE OF ACCEPTANCE)

(Attached.)

Recording Requested By,
And When Recorded, Mail To:

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Clerk

APN: 2061-033-023, 024, 025, 026 and 027

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

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

Documentary Transfer Tax is \$0; exempt conveyance to a public entity, and conveyance for no consideration (donation). Property is in the City of Agoura Hills, County of Los Angeles, California.

QUITCLAIM DEED
(Donation)

CREEKSIDE TERRACE, LP, a California limited partnership ("Grantor"), hereby remises, releases, and forever quitclaims to the CITY OF AGOURA HILLS ("Grantee") all right, title and interest it may have in, under and to that certain real property in the City of Agoura Hills, County of Los Angeles, State of California described on Exhibit "A" attached hereto.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on December __, 2019.

GRANTOR:

CREEKSIDE TERRACE, LP,
a California limited partnership

By: Creekside, Inc., a California corporation,
Its General Partner

By: _____
Print Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The land in the City of Agoura Hills, County of Los Angeles, State of California, described as follows:

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APNS: 2061-032-023; 2061-032-024; 2061-032-025; 2061-032-026 and 2061-032-027

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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, _____ 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

CERTIFICATE OF ACCEPTANCE FOR LAND DONATION

(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Quitclaim Deed dated in December, 2019 executed by CREEKSIDE TERRACE, LP as grantor, to the City of Agoura Hills, a California municipal corporation, as grantee, is hereby accepted by the undersigned officer on behalf of the City of Agoura Hills pursuant to the authority conferred by the City Council of the City of Agoura Hills at a meeting on December 11, 2019 and the grantee consents to the recordation thereof by its duly authorized officer.

Print Name: _____

Title: _____

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 December __, 2019 before me, _____,
(insert name and title of the officer)

a Notary Public in and for the State of California, 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)

EXHIBIT "C"

DOCUMENTS DELIVERED TO DONEE

EXHIBIT "D"

FORM OF CITY "ACKNOWLEDGMENT LETTER"

(Attached.)

[CITY LETTERHEAD]

[Date]

Creekside Terrace, LP
4458 Matilija
Sherman Oaks, CA 91423

On behalf of the City of Agoura Hills, I would like to acknowledge receipt on [_____] of the unconditional donation of the land to the City of Agoura Hills, that is more particularly described below. The land was received for no consideration (including goods or services) from the City of Agoura Hills.

The land in the City of Agoura Hills, County of Los Angeles, State of California, described as follows:

PARCELS 3 THROUGH 7, INCLUSIVE OF PARCEL MAP NO. 73033, IN THE CITY OF AGOURA HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 383, PAGES 58 TO 73 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBONS SAVED AND SOLD FROM SAID LAND, AS RESERVED BY ESER WIKHOLM ET UX., IN DEED RECORDED DECEMBER 30, 1953, IN BOOK 43495, PAGE 30, OFFICIAL RECORDS.

APNS: 2061-032-023; 2061-032-024; 2061-032-025; 2061-032-026 and 2061-032-027

Thank you for your generous contribution.

Sincerely,

Print Name: _____
Title: _____

ATTACHMENT “B”

