

Meeting Date: 6/17/2014

Report Type: Staff/Discussion

Report ID: 2014-00446

Title: Sale of 3.12 net acres of City-owned property to Calvine & Elk Grove-Florin, LLC and PDC Construction Company, Inc.

Location: District 6

Recommendation: Pass a Resolution approving an agreement for the sale of 3.12 net acres located at the southwest corner of Fair Oaks Boulevard and Howe Avenue to Calvine & Elk Grove-Florin, LLC and PDC Construction Company, Inc. (Paul Petrovich owned companies) for \$3,100,000; authorizing the City Manager to adjust the General Fund revenue budget and administrative contingency by \$3,100,000; and by authorizing and directing the City Manager or the City Manager's designee to execute such additional necessary actions to implement the agreement.

Contact: Sabrina Tefft, Project Manager, (916) 808-3789, Economic Development

Presenter: Jim Rinehart, Director of Economic Development, (916) 808-5054, Economic Development Department

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Sale Agreement

City Attorney Review

Approved as to Form
Joseph Cerullo
6/11/2014 6:08:00 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 5/29/2014 3:55:31 PM

Description/Analysis

Issue: On June 28, 2013, staff issued a Request for Proposals (RFP) to select a qualified developer for the purchase and development of City-owned property at the southwest corner of Fair Oaks Boulevard and Howe Avenue (APN 295-0020-007).

The City requested proposals for commercial development such as retail, restaurant and/or office “that will capitalize on the importance of the prominent commercial location in the area.” The City received proposals from five developers.

After receipt of the proposals, an evaluation committee composed of representatives from the City of Sacramento (encompassing finance, planning, transportation/public works and economic development disciplines) as well as a member from the Capital Area Development Authority reviewed the proposals.

Petrovich Development Company offered \$3.1 million—the highest amount of any of the proposers for the purchase of the land. In 2013, an independent appraiser valued the land at \$1,390,000.

Interviews were set up with two of the developer teams to review their proposal submittals and to hold meetings on the development site with City staff to discuss the proposed projects. As a result, the decision was made to recommend the project proposed by Petrovich Development Company.

Accordingly, staff recommends that the City Council authorize the City Manager to execute a purchase and sale agreement with Calvine & Elk Grove-Florin, LLC and PDC Construction Company, Inc. (Paul Petrovich owned companies) for the sale of approximately 3.12 acres of City-owned real property, in fee, located at the southwest corner of Fair Oaks Boulevard and Howe Avenue. Petrovich Development Company has proposed a development of 25,500 to 31,000 square feet of retail with five pads: two restaurant and three commercial shops.

Policy Considerations: This proposal offers a compatible use for the subject property in consideration of its location. Staff recommends that the City Council provide for the sale of the property without first calling for bids by finding that such a sale is in the best interest of the City. (City Code §3.88.090.A.2.)

Economic Impacts: The total cost of construction for the proposed development is estimated at \$9.3 million, which is projected to create 48.4 total jobs (27.9 direct jobs and another 20.5 jobs through indirect and induced activities). Additionally, according to the CSER calculation, over \$5,125,000 in direct output and over \$2,794,000 in indirect or induced activities will be generated by the construction project.

The indicated economic impact estimates are calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

Environmental Considerations: Under Section 15312 of the California Environmental Quality Act (CEQA) guidelines, the sale of surplus city property is categorically exempt from CEQA.

Sustainability: This report does not address any sustainability issues.

Commission/Committee Action: None.

Rationale for Recommendation: The negotiated purchase and sale agreement will allow for the development of retail shops with two restaurants, which will provide sales and property tax.

Financial Considerations: Calvine & Elk Grove-Florin, LLC and PDC Construction Company, Inc. will purchase the site for \$3,100,000. A January 15, 2013 appraisal of the site was valued at \$1,390,000. Sale proceeds will be budgeted in the General Fund Administrative Contingency. The City Manager will return to City Council with a recommendation for use of these funds at a later date.

Local Business Enterprise (LBE): Not applicable.

Background

On June 28, 2013, staff issued a Request for Proposals (RFP) to select a qualified developer for the purchase and development of City-owned property at the southwest corner of Fair Oaks Boulevard and Howe Avenue (APN 295-0020-007).

The City requested proposals that would be suitable in areas such as retail, restaurant and/or office development. The City received proposals from five developers:

1. Ravel Rasmussen Properties-Separovich/Domich-Lionakis
2. Petrovich Development Company
3. Jackson Properties
4. Heller Pacific
5. Saca Development-Cordano Company-Jon Gianulias

An evaluation committee comprised of City officials (representing finance, planning, transportation/public works and economic development disciplines) as well as a member from the Capital Area Development Authority reviewed the proposals. The committee evaluated the proposals. Of the five proposals, Petrovich Development Company offered the highest amount for the site—\$3.1 million.

Two of the development teams—Jackson Properties and Petrovich Development Company—were then selected to be interviewed on site to discuss in depth their respective proposals. Both firms reviewed their respective proposal submittals and engaged in on-site discussions pertaining to possible site constraints, engineering solutions, and ways to mitigate problems. Department directors from Public Works, Utilities, Community Development and Economic Development, along with the Fire Marshal and appropriate technical staff met with the teams at the site.

After considering and weighing all the parameters for development, staff recommends the project proposed by Petrovich Development Company (PDC) as being in the best interest of the City of Sacramento.

PDC is a local developer with experience building regional retail/commercial power centers, as well as small neighborhood shopping centers. PDC's projects are unique and add value to the community. PDC has teamed with Dewberry Architects, Inc. to design and construct a retail commercial "village" comprised of five buildings of various sizes for a total square footage of approximately 25,500 to 31,000 square feet. The plan includes the potential for two restaurant pads and three commercial shops type buildings.

The PDC pro forma for the project estimates a total project cost of \$9,380,020, without land. It includes sufficient funding for all anticipated off site costs with no claim for any City of Sacramento funding. The \$3.1 million purchase price is for the property on an

as-is condition, with close of escrow to be as soon as possible, but no later than August 19, 2014, after Council action approving the attached purchase agreement. All closing costs are to be borne by the buyer.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING AND AUTHORIZING THE SALE OF 3.12 NET ACRES OF CITY-OWNED PROPERTY AT THE SOUTHWEST CORNER OF FAIR OAKS BOULEVARD AND HOWE AVENUE TO CALVINE & ELK GROVE-FLORIN, LLC and PDC CONSTRUCTION COMPANY, INC.

BACKGROUND:

- A. The City of Sacramento owns 3.12 net acres of property at the southwest corner of Fair Oaks Boulevard and Howe Avenue (the “**Site**”).
- B. On June 28, 2013, City staff released a Request for Proposals to select a qualified developer for the purchase and development of the Site.
- C. An evaluation committee composed of City officials, as well as a member from the Capital Area Development Authority, reviewed five proposals.
- D. Two of the development teams – Jackson Properties and Petrovich Development Company – were selected to be interviewed.
- E. Calvin & Elk Grove-Florin, LLC and PDC Construction Company, Inc. (Paul Petrovich owned companies) have been selected to purchase the Site for \$3,100,000.
- F. Calvin & Elk Grove-Florin, LLC and PDC Construction Company, Inc. desire to acquire the Site from the City to construct a retail commercial “village” composed of five buildings of various sizes for a total square footage of approximately 25,500 to 31,000 square feet. The plan includes the potential for two restaurant pads and three commercial-shop-type buildings.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The facts set forth in the Background are correct.
- Section 2. The City Manager or the City Manager’s designee is hereby authorized to sign, on the City’s behalf, an Agreement for the Sale of Real Property with Calvin & Elk Grove-Florin, LLC and PDC Construction Company, Inc. (Paul Petrovich owned companies) substantially in the form attached to this resolution as Exhibit A. Under this agreement, Calvin & Elk Grove-Florin, LLC and PDC Construction Company, Inc. will pay the City \$3,100,000 for 3.12 net acres located at the southwest corner of Fair Oaks Boulevard and Howe Avenue.
- Section 3. The City Manager or the City Manager’s designee is hereby authorized to adjust the General Fund revenue budget and Administrative Contingency by \$3,100,000.

Section 4. The City Manager or the City Manager's designee is hereby authorized to execute such additional necessary documents and to take such necessary additional actions to implement the Agreement for Sale of Real Property.

Section 5. The City Council hereby finds that selling the Site without first calling for bids is in the best interest of the City. (City Code §3.88.090.A.2.)

Table of Contents:

Exhibit A - Purchase and Sale Agreement with Calvine & Elk Grove-Florin, LLC and PDC Construction Company, Inc.

File Number: SAL-
Project: Sale of SW Corner of Fair Oaks & Howe
APN: 295-0020-007-0000
Escrow Number: 674243
Title Company: First American Title Company
Preliminary Report of Title: 674243

AGREEMENT FOR SALE OF REAL PROPERTY

This Agreement for Sale of Real Property, dated June ____, 2014, for purposes of identification, is between CALVINE & ELK GROVE-FLORIN, LLC, a limited liability company, and PDC CONSTRUCTION COMPANY, INC., a California corporation, as tenants-in-common (collectively, the “**Buyer**”); and the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”).

Background

The City desires to sell and convey to the Buyer, and the Buyer desires to purchase from the City, fee-simple title to the City-owned property located at the southwest corner of Howe Ave and Fair Oaks Boulevard in the City of Sacramento and designated as Assessor Parcel Number 295-0020-007-0000, with all of the City’s rights, title, and interest in and to that Property, including all entitlements, easements, rights, privileges, mineral rights, oil and gas rights, water, water rights, development rights, and appurtenances (the “**Property**”). Comprising approximately 135,907 square feet, the Property is generally depicted in Exhibit A and more particularly described in Exhibit A-1, both of which are attached to this agreement. The Buyer intends to develop the Property for retail uses.

With these background facts in mind, the parties agree as follows:

1. **Sale and Purchase.** The City shall sell and convey the Property to the Buyer, and the Buyer shall accept and purchase the Property from the City, upon the terms and conditions set forth below.
2. **Purchase Price.** The purchase price of the Property \$3,100,000.00 payable by Buyer as follows:
 - (a) Concurrently with entering into this agreement, the Buyer shall pay to the City, outside of escrow, the sum \$100, which, notwithstanding any contrary provision in this agreement, will be non-refundable except in the event of the City’s breach or default of this agreement.
 - (b) The Buyer shall pay the balance of the purchase price at the close of escrow in cash or by certified check or cashier’s check drawn to the order of the Escrow Holder named in Section 3.
3. **Escrow.** An escrow account (number 674243) to consummate the sale of the Property according to the terms of this agreement has been opened at the office of First American Title Company (the “**Escrow Holder**”), 1610 Arden Way, Suite 101, Sacramento, California. As soon as practicable after the effective date of this agreement, a copy of it will be deposited with the Escrow Holder. This agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions will be the City’s sole responsibility; such further instructions must be consistent with the terms and provisions of this agreement unless the Buyer agrees otherwise in writing. The Escrow Holder will be concerned only with the provisions of this Section 3. The escrow shall be on the following terms and conditions:

- (a) **Close of Escrow.** The escrow will be closed and the Buyer will be entitled to possession of the Property on the date that a grant deed conveying the Property from the City to the Buyer (the “Grant Deed”) is recorded. The escrow will be considered to be in a condition to close when the Escrow Holder is authorized under this agreement to record the Grant Deed and is otherwise able to do so. Unless the parties agree in writing to an extension of time, the close of escrow will be within 71 days after the effective date of this agreement or sooner in the Buyer’s sole discretion, but in no event will escrow close later than August 19, 2014.
- (b) **Payment of the Purchase Price.** Before the close of escrow, the Buyer shall deposit with the Escrow Holder an amount equal to the Purchase Price (less the sum of any deposits previously made by the Buyer) plus the Escrow Holder’s estimate of the Incidental Expenses (as defined in Section 3(g) below). The Escrow Holder will release this deposit to the City upon the close of escrow, subject to the provisions of this Section 3.
- (c) **Preliminary Report.** As soon as practicable after the opening of escrow, the City shall obtain a Preliminary Report on the Property at the Buyer’s expense and provide a copy of the Preliminary Report to the Buyer.
- (1) Within 15 business days after receiving a copy of the Preliminary Report, the Buyer shall notify the City in writing of any objections to any items listed in the report; the term “business day” means any day the City’s offices located at 915 I Street, Sacramento, California, are open to the public. If the Buyer timely objects to any item but the item is not eliminated within 15 days after the City’s receipt of the objection, then the Buyer may do either of the following:
- (A) terminate this agreement without any liability on the part of either party, except that the Buyer shall pay the Incidental Expenses incurred to the date of the termination; or
- (B) purchase the Property without a reduction in the Purchase Price and without any liability on the part of City for the item or items.
- (2) The Buyer’s failure to object to any item in the manner provided by Section 3(c)(1) will constitute the Buyer’s approval of that item. Time is of the essence in performance of the obligations set forth in this Section 3(c).
- (d) **Title.** The City shall execute and deliver to the Escrow Holder a good and sufficient recordable Grant Deed conveying to the Buyer fee-simple title to the Property, free from all liens, charges, encroachments, encumbrances, restrictions, easements, tenancies, and other title defects except (1) a lien to secure payment of current real-estate taxes not delinquent; (b) the lien of current supplemental taxes not delinquent; and (c) exceptions that the Buyer approves or permits in accordance with this agreement.
- (e) **Conditions to Close of Escrow.** When all of the conditions to closing that are set forth in this agreement have been either satisfied or waived by the parties (with the satisfaction or waiver confirmed in writing) and the escrow is ready to close, the Escrow Holder will cause the Grant Deed to be recorded.

- (f) **Delivery of Title Policy at Closing.** As a condition to the Buyer's obligation to close, the Escrow Holder must deliver to Buyer at the closing a CLTA standard owner's policy of title insurance (or an ALTA extended owner's policy, so long as Buyer provides the necessary ALTA survey to the Escrow Holder) that is issued as of the date and time of the recording of the Grant Deed, is in the amount of the Purchase Price, contains such endorsements as the Buyer may request, and insures the Buyer as owner of good, marketable, and indefeasible fee-simple title to the Property, subject only to the Permitted Exceptions (the "**Title Policy**"). The Title Policy may be delivered after the closing if, at the closing, the Escrow Holder issues a currently effective, duly executed "marked-up" title commitment or pro forma policy and irrevocably commits in writing to issue the Title Policy in the form of the "marked-up" title commitment or pro forma policy promptly after the closing date. The City shall deliver to the Escrow Holder any affidavits or other documents reasonably requested by the Escrow Holder to issue the Title Policy to the Buyer.
- (g) **Escrow Fees and Expenses.** As used in this agreement, the term "**Incidental Expenses**" means all costs of escrow and closing, including the cost of any escrow fees, the charge for preparation of escrow documents, recording costs, and the cost of the Title Policy. In accordance with Section 3.88.090 of the Sacramento City Code, the Buyer shall pay the full purchase price and all Incidental Expenses pertaining to the transaction.
- (h) **Commission.** The City and the Buyer each warrant that they have not dealt with any real-estate brokers, agents, or finders in connection with this transaction. The City and the Buyer each shall indemnify the other for any claim for commission, finder's fee, or other compensation that arises from the acts of the indemnifying party.
- (i) **Proration and Costs.** Taxes for the current fiscal year are to be prorated as of the closing. If the tax bills for the current fiscal year are not available at the time of closing, then the taxes are to be prorated on the basis of the most recent tax bills available. When the appropriate tax bill for the current fiscal period becomes available, the taxes, at the election of either party, will be re-prorated, and any adjustments from the original proration will be made accordingly. The City shall pay and discharge all assessments that affect the Property and are outstanding at the closing.
- (j) **Standard Escrow Instructions.** For those escrow matters not specifically addressed herein, the Escrow Holder's standard escrow instructions will apply. If there is a conflict between this agreement and the Escrow Holder's standard escrow instructions, then this agreement will control.
- (k) **Actions by Escrow Holder.** On the closing date, provided that each of the conditions to each party's obligations has been satisfied or waived, the Escrow Holder will undertake and perform the following acts in the following order:
- (1) record the Grant Deed in the Official Records of Sacramento County with, at the Buyer's discretion, documentary-transfer-tax information affixed to the back of the Grant Deed or otherwise affixed after recording in a separate affidavit (or take any other steps required to prevent disclosure to the general public of the Purchase Price to the extent reasonably practicable) and obtain a conformed copy of the recorded Grant Deed for delivery to the Buyer;

- (2) pay any transfer taxes;
- (3) instruct the Sacramento County Clerk-Recorder to return the recorded Grant Deed to the Buyer;
- (4) distribute to the City, or as the City may instruct, current funds in payment of the Purchase Price, as adjusted by prorations and other payments or deductions as set forth on the City's executed closing statement;
- (5) deliver to Buyer (A) a conformed photocopy of the recorded Grant Deed, (B) the original executed Non-Foreign Affidavit, and (C) the original executed California Tax Certificate; and (D) an original counterpart of the General Assignment, substantially in the form attached hereto as Exhibit C (Form General Assignment);
- (6) Deliver to the City an original counterpart of the General Assignment; and
- (7) issue to Buyer and the City final escrow closing statements reflecting the foregoing and all prorations between the Buyer and the City as instructed in this agreement.

4. Additional Conditions to Buyer's Obligations. The close of escrow and the Buyer's obligations to consummate the transactions contemplated by this agreement are subject to the satisfaction of the following additional conditions (or the Buyer's waiver of the conditions) on or before the dates designated below for the satisfaction of the conditions or on or before the close of escrow in the absence of a specified date:

- (a) *Title Insurance.* Upon the close of escrow, the Escrow Holder must have irrevocably committed to issue the Title Policy to the Buyer in the amount of the Purchase Price and subject to only those exceptions to title approved by the Buyer.
- (b) *The City's Obligations.* Upon the close of escrow, the City must have timely performed all of its obligations under this agreement.
- (c) *The City's Representations.* Upon the close of escrow, the representations and warranties made by the City to the Buyer in this agreement must be true and correct.
- (d) *Material Change.* There has been no material change in, or addition to, the information or items reviewed and approved by the Buyer during the Feasibility Period, and there has been no material modification of, or addition to, any of the matters that are disclosed in or on the Preliminary Report or that otherwise affect title to the Property.
- (e) *Condition of Property.* The physical condition of the Property must be substantially the same at the close of escrow as on the effective date of this agreement.
- (f) *Legal Parcel.* The Property must be a legal parcel before the close of escrow; neither the Buyer nor the City may waive this condition.
- (g) *Due Diligence Notice.* The Buyer must have approved the condition of the Property in accordance with Section 7 below.

5. **The City's Election to Remedy Breaches.** Notwithstanding any provision of this agreement to the contrary, the City has the right to remedy breaches of this agreement before the close of escrow, subject to the following requirements and restrictions:
- (a) The Buyer shall immediately notify the City in writing of the Buyer's discovery, before the close of escrow, of a breach of any of the provisions of this agreement.
 - (b) If the Buyer gives notice to the City as required by Section 5(a), then the City may elect to remedy the breach by giving the Buyer written notice within five days after receiving the notice. The City's notice of election to remedy must specify the number of days, up to a maximum of 30, that escrow will be postponed so that the City may remedy the breach. If the City fails to provide a timely notice of election or fails to remedy the breach before the close of escrow (including any extension of escrow made under this Section 5), then the Buyer may do one of the following:
 - (1) terminate this agreement without any liability on the part of either party;
 - (2) purchase the Property without a reduction in the Purchase Price and without any liability on the part of the City for the un-remedied breach or breaches; or
 - (3) pursue any of the remedies described in Section 6 below.
 - (c) The Buyer's failure to provide a notice of election to the City as required by Section 5(a) will be deemed an election of the option in Section 5(b)(2).
6. **Consequence of the City's Breach.** If the close of escrow fails to occur because of the City's breach, and if the City has had the opportunity to remedy its breach under Section 5, or if before the closing the City materially breaches any of its representations or warranties in Section 10, then the Buyer may elect, as its sole remedy, either to (a) terminate this agreement by giving the City written notice of the election before or at the closing, in which case Buyer may seek the remedies for breach of contract that are available under applicable law, including the remedy of specific performance; or (b) waive the breach and proceed to the closing.
7. **Feasibility Period.** The Buyer has until 5:00 p.m. (Sacramento time) on the date that is 60 days after the effective date this agreement (the "**Feasibility Period**") in which to evaluate the suitability of the Property for the Buyer's intended use and ownership, including, except as set forth in this agreement, the environmental condition of the Property; governmental land-use regulations, zoning ordinances, use restrictions, and architectural and design-approval requirements; development costs; financial and market feasibility; the status of the entitlements of the Property; existing or potential assessments imposed on the Property; the physical condition of the Property; and any other matter affecting the Property (the "**Due Diligence Conditions**").
- (a) *Notice of Approval or Disapproval.* The Buyer shall give the City written notice of the Buyer's approval or disapproval of the Due Diligence Conditions (the "**Due Diligence Notice**") on or before the expiration of the Feasibility Period. If the Buyer fails to timely give its Due Diligence Notice, then the failure will be deemed to be the Buyer's disapproval of the Property. If the Buyer gives a Due Diligence Notice disapproving one or more of the Due Diligence Conditions or is deemed to have disapproved the Property by its failure to timely give its Due Diligence

Notice, then this agreement will terminate, and thereafter neither party will have any further liability or obligation to the other except as provided in this agreement.

- (b) *Due Diligence Materials.* Within one day of effective date of this agreement, the City shall deliver to the Buyer, for the Buyer's review and copying, the documents and materials described in Exhibit B to the extent they are currently in the City's possession or under the control of the City or the City officers, employees, and agents (the "**Due Diligence Materials**"). The City's failure to timely deliver the Due Diligence Materials will extend the Feasibility Period by one day for each day of the City's failure until all Due Diligence Materials have been delivered.

8. Right of Buyer to Enter Property. The City grants to the Buyer and the Buyer's agents the right, at any time and from time to time, to enter onto the Property and conduct tests or investigations, subject to the following:

- (a) the tests or investigations must be conducted at the Buyer's sole cost;
- (b) the tests or investigations must not unreasonably interfere with the City's possession;
- (c) the Buyer shall indemnify and hold the City harmless from any costs or liabilities resulting from the tests or investigations or the entry onto the Property; and
- (d) the Buyer hereby releases and shall completely indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents from and against all responsibility and liability for property damage or personal injury to the extent the damage or injury is caused by the activities on the Property of the Buyer or the Buyer's agents.

9. Release and Indemnification of City.

- (a) **The Buyer is purchasing the Property "as is" in its existing condition.** The Buyer acknowledges that the City and the City's officers, employees, and agents have not and do not make any representation or warranty to the Buyer concerning the Property, including representations or warranties regarding the suitability of the Property for the Buyer's intended use; the Property's compliance with federal, state, or local statutes, ordinances, rules, regulations, and other law (including those relating to toxic or hazardous wastes, materials, or substances); or the need for land-use entitlements. The Buyer further acknowledges that it is solely responsible for obtaining land-use entitlements and paying the cost of obtaining land-use entitlements; that the City makes no commitment or representation with respect to land-use entitlements; and that the City reserves its full, unfettered police-power authority and discretion in reviewing any application for land-use entitlements. The Buyer shall perform and rely solely upon its own independent investigation concerning the Property and the Property's compliance with any applicable law. The Buyer acknowledges that it is acquiring the Property subject to all existing statutes, ordinances, rules, regulations, and law, and that neither the City nor any of the City's officers, employees, or agents has made any warranties, representations, or statements regarding any statutes, ordinances, rules, regulations, or other law of any governmental or quasi-governmental body, entity, district, or agency having authority over the use, condition, or occupancy of the Property.

- (b) By taking title to the Property, the Buyer assumes complete responsibility for the presence or release of any toxic or hazardous wastes, materials, or substances on or from the Property; for all costs associated with removing and otherwise disposing of such wastes, materials, or substances and with remediating the Property as required by federal, state, or local statutes, ordinance, rules, regulations, and other law; and for any associated liabilities, claims, demands, damages, and other costs. After the Buyer takes title to the Property, the City will have no liability whatsoever for the Property, including liability related to the presence or release of any toxic or hazardous wastes, materials, or substances.

10. The City's Representations and Warranties. In consideration of the Buyer's entering into this agreement, the City makes the following representations and warranties, which will survive the closing and not be deemed to have merged into the Grant Deed or other instrument of closing:

- (a) The City is a municipal corporation duly organized and existing under its charter and the laws of the state of California, is authorized to do business in the state of California, and is duly authorized to execute and perform its obligations under this agreement. The City's performance of those obligations will not violate any materials terms of its organizational documents or any contract to which it is bound. The City has taken all requisite action in connection with the entering into this agreement, the instruments referenced in this agreement, and the consummation of the transaction contemplated by this agreement. The individual who, on the City's behalf, signs this agreement and the instruments referenced in this agreement has the legal power, right, and actual authority to bind the City to their terms and conditions.
- (b) The City has not received and is not aware of any notification from the building department, health department or other city, county, or state authority having jurisdiction, requiring any work to be done on or affecting the Property. The City further warrants that if it receives any such notice or notices before the closing, then it will promptly provide the Buyer with copies of the notice or notices. If the City is unable or unwilling to perform the work required in the notice or notices at its sole cost and expense on or before close of escrow, then the Buyer may undertake the work at the Buyer's sole cost and expense; alternatively, the Buyer may cancel this agreement without further liability to the City, and all deposits held by the Escrow Holder, less the Incidental Expenses incurred to the date of the termination, will be returned to the Buyer.
- (c) The City has not received written notice of any pending condemnation, eminent-domain, or similar proceedings that affects the Property, and to the City's actual knowledge no such proceedings are contemplated. The City has not received written notice from any governmental authority regarding existing violations of environmental laws or any other laws applicable to the Property. The City has not received written notice of any action, suit, quasi-judicial or administrative proceeding, or arbitration that is pending in any court or any governmental or quasi-government authority. The City has no actual knowledge of any threatened action, suit, or proceeding that is against or affects all or any portion of the Property; that relates to, or arises out of, the ownership, management, development, proposed development, or operation of the Property; or that would affect the City's ability to perform its obligations under this agreement.

- (d) The City has no outstanding contracts for any improvements to the Property that have not been fully paid for.
- (e) To the City’s actual knowledge, the City has received no notice of any hazardous materials located on, under, or about the Property, except as disclosed in the Due Diligence Materials. As used in this Section 10(e), the term “hazardous substance” means any substance, material waste, pollutant, or contaminant listed or defined in any law or regulation as hazardous or toxic, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); California Health and Safety Code Section 25316 or 25281; the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); California Health and Safety Code § 25117; and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.).
- (f) The City is not a foreign person and is a “United States person” as that term is defined in the Internal Revenue Code of 1986 (26 U.S.C. § 7701(a)(30)).
- (g) The City owns fee title to the Property; has not previously sold, transferred, or conveyed the Property; and has not entered into any executory contracts for the sale of the Property (other than this Agreement). There are no rights of first refusal or options to purchase the Property.
- (h) At the close of escrow, there will be no leases or other agreements (whether oral or written) in effect that affect or relate to the rights of any person or entity with respect to the possession of the Property or any portion of the Property.

11. Miscellaneous.

- (a) *Effective Date.* This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- (b) *Arbitration of Disputes.* Any controversy or claim arising out of this agreement or a breach of this agreement will be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered in arbitration may be entered in any court having jurisdiction.

By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the “arbitration of disputes” provision decided by neutral arbitration as provided by California law, and you are giving up your judicial rights to discovery and appeal unless such rights are specifically included in this Section 11(b). If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the “arbitration of disputes” provision to neutral arbitration.

Initialed by Buyer: _____

Initialed by City: _____

- (c) *Assignment.* The Buyer may not assign this agreement without City’s prior written consent, except as follows: the Buyer may, without the City’s consent, assign this agreement to (1) the

Buyer's qualified intermediary or other entity in order to consummate or facilitate a like-kind tax-deferred exchanges under Section 1031 of the Internal Revenue Code of 1986 (the City has no responsibility for the validity of such a tax-deferred exchange); or (2) to Dakota Investment Company, LLC, an entity wholly owned and controlled by Paul S. Petrovich and Cheryl K. Petrovich. The assignment of this agreement will not relieve the Buyer of liability under this agreement.

- (d) *Additional Documents.* The Buyer and the City shall execute such other documents and instruments as may be reasonably requested by the other party or the Escrow Holder in connection with the conveyance of the Property consistent with the provisions of this agreement.
- (e) *Attorneys' Fees.* If any action, proceeding, or arbitration arising out of, or relating to, this agreement, including an action for declaratory relief, is commenced by either party or by the Escrow Holder, then, as between the Buyer and the City, the prevailing party will be entitled to receive, from the other party, in addition to any other relief that may be granted, the prevailing party's reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration. If the City is the prevailing party, then this Section 11(e) will apply whether the City is represented in the litigation by outside counsel or by the Office of the City Attorney. If the Buyer is the prevailing party, then this Section 11(e) will apply whether the Buyer is represented in the litigation by outside counsel or by the Buyer's inside counsel. California Civil Code Section 1717 will apply to proceedings arising under this Section 11(e).
- (f) *Authority of Signatories.* Each party to this agreement warrants to the other that it is duly organized and existing; and each signatory to this agreement represents to the other party that it has full right and authority to enter into and consummate this agreement and all related documents.
- (g) *Binding Effect.* This agreement is binding on, and inures to the benefit of, the parties to this agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this agreement.
- (h) *Counterparts.* This agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which will together constitute one and the same instrument.
- (i) *Default.* If the Buyer defaults in the performance of this agreement, then the City will be released from any obligation to sell the Property to the Buyer.
- (j) *Waiver.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- (k) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. "**Include**" and its variants are terms of enlargement rather than of limitation. For

example, “includes” means “includes but not limited to,” and “including” means “including but not limited to.” Exhibits A, B, and C are part of this agreement.

- (l) *Notices.* Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 11(l) to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 11(l).

If to the Buyer:

Calvine & Elk Grove-Florin, LLC
PDC Construction Company, Inc.
Attn: Paul Petrovich
825 K Street
Sacramento, CA 95814
Fax: 916-442-6313
Email: paul@petrovichdevelopment

If to the City:

City of Sacramento
Real Estate Services Section
Attn: Supervisor, Real Estate Services Section
5730 24th Street, Building 4
Sacramento, CA 95822
Fax: 916-808-8520
Email: bsinclair@cityofsacramento.org

- (m) *No Joint Venture.* This agreement does not create a joint venture, partnership or other relationship between the parties.
- (n) *Loss & Destruction.* The Uniform Vendor and Purchaser Risk Act set forth in California Civil Code Section 1662 and its provisions governing the allocation of risk of loss governs this transaction except where a contrary result is specified in this agreement. Civil Code Section 1662 states as follows:

Any contract hereafter made in this State for the purchase and sale of real property shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise: [¶] (a) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid; [¶] (b) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid. [¶] This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [¶] This section may be cited as the Uniform Vendor and Purchaser Risk Act.

- (o) *No Third-Party Beneficiary.* This agreement is solely for the benefit of the City and the Buyer. It is not intended to benefit any person or entity that is not a party.

- (p) *Partial Invalidity.* If a court with jurisdiction holds any nonmaterial provision of this agreement to be invalid, void, or unenforceable, then the other provisions will remain in full force.
- (q) *Survival of Provisions.* Notwithstanding any provisions of this agreement to the contrary, this agreement will survive the close of escrow and will not merge into the Grant Deed, and the covenants, representations, warranties, and obligations in this agreement will survive the recording of the Grant Deed.
- (r) *Time of Essence.* Time is of the essence of this agreement.
- (s) *Entire Agreement.* This agreement and the attached exhibits constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect. Any amendment to this agreement must be in writing and signed by the parties.

(Signature Page Follows)

City of Sacramento

By: _____
John Shirey, City Manager

Dated: June __, 2014

Recommended for Approval

By: _____
James R. Rinehart, Director
Economic Development Department

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Attest:
Sacramento City Clerk

By: _____

Calvine & Elk Grove-Florin, LLC

By: _____
Paul S. Petrovich, Manager

Dated: June __, 2014

PDC Construction Company, Inc.

By: _____
Paul S. Petrovich, Manager

Dated: June __, 2014

Approved as to Form

By: _____

EXHIBIT "A"

Depiction of Property

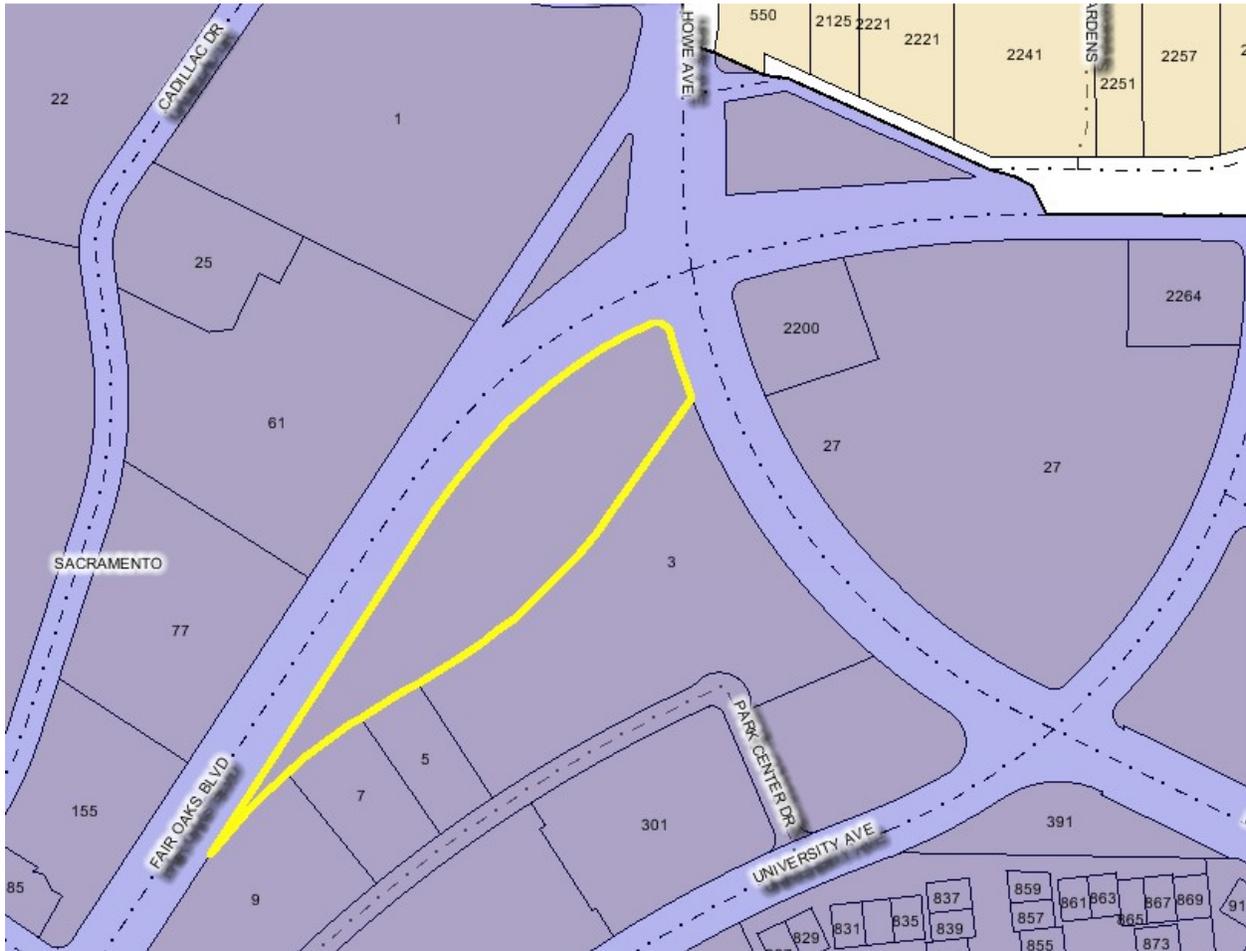


EXHIBIT A-1

Legal Description of Property

(To be inserted before close of escrow.)

Exhibit B
Due Diligence Materials

List of Due Diligence Materials

1. All service contracts, and other contracts, warranties, guarantees, indemnities, and other agreements affecting the Property.
2. All real-property tax statements for the current and prior three tax years, and detailed income-and-expense statements for the current and prior three calendar years.
3. All soils, groundwater, environmental, property-inspection, marketing, appraisal, and other reports and test results relating to the Property, and all engineers' and consultants' plans, reports, and studies relating to the physical condition of the Property and the potential development of the Property, other than those subject to the attorney-client privilege or the attorney work-product doctrine.
4. All maps, surveys (including ALTA surveys), plans, specifications, and drawings, including any work in progress and any final and as-built plans and specifications, together with letters or other documents evidencing whether the City has the right to assign the maps, surveys, plans, specifications, and drawings to the Buyer at closing at no cost to the Buyer.
5. All plans, development plans, correspondence, meeting notes, agendas, staff reports, applications or other documents in connection with the Property or potential future development of the Property other than those subject to the attorney-client privilege or the attorney work-product doctrine.
6. All licenses, approvals, authorizations, and permits relating to the Property.
7. All documents evidencing the intangible property to be assigned to the Buyer at closing.
8. Any notices of violation of laws, if any, from any governmental or quasi-governmental authorities related to the Property.
9. All correspondence and notices from relating to the Property including without limitation their employees, representatives, attorneys, contractors, and agents other than those subject to the attorney-client privilege or the attorney work-product doctrine. The term "correspondence" as used in this exhibit means all written correspondence, including those transmitted via e-mail, facsimile, or any other means of transmission.
10. All other material documents relating to the physical condition of the Property other than those subject to the attorney-client privilege or the attorney work-product doctrine.

Exhibit C
Form of General Assignment

GENERAL ASSIGNMENT

This General Assignment is made with reference to that certain Agreement for Sale of Real Property (the “**Contract**”) with a reference date of June __, 2014, in which the seller is the City of Sacramento (the “**City**”), and the buyer is _____ (the “**Buyer**”). The Contract provides the terms and conditions upon which the City shall sell, and the Buyer shall purchase, certain real property and improvements (the “**Property**”) located at _____, the legal description of which is set forth on Exhibit A attached hereto and incorporated herein by reference.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby assigns to the Buyer and the Buyer’s successors and assigns all of the City’s right, title, and interest in and to any intangibles related to the Property arising out of, or in connection with, the ownership, management, and operation of the Property, including but not limited to all claims and causes of action, governmental permits, use permits, warranties, guarantees, indemnities, rights and claims (including but not limited to those for workmanship, materials, and performance), and contract rights related to the Property or used in connection with the ownership and operation of the Property.

The effective date of this General Assignment is the date on which a deed is recorded in the Official Records of Sacramento County, California, conveying the Property from the City to the Buyer. This General Assignment is governed by, and is to be construed and interpreted in accordance with, the laws of the State of California.

(Signature page follows)

IN WITNESS WHEREOF, the undersigned have caused this General Assignment to be duly executed and delivered on the date set forth below.

City of Sacramento

By: _____
John Shirey, City Manager
Dated: June __, 2014

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Attest:
Sacramento City Clerk

By: _____

Calvine & Elk Grove-Florin, LLC

By: _____
Paul S. Petrovich, Manager
Dated: June __, 2014

PDC Construction Company, Inc.

By: _____
Paul S. Petrovich, Manager
Dated: June __, 2014