ITEM NO. 14

STAFF REPORT

CITY OF OCEANSIDE

DATE: September 12, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **OCEANSIDE BOULEVARD LIFT STATION RELOCATION**

SYNOPSIS

Staff recommends that the City Council approve a purchase and sale agreement in the amount of $300,000 with Oceanside Bluffs Investments, LLC, for the purchase of the easterly 0.5 acre of Assessor Parcel Number 152-320-10, being a vacant parcel situated along Oceanside Boulevard west of Vine Street, for the relocation of the Oceanside Boulevard Lift Station; and authorize the Mayor to execute the agreement, the City Clerk to accept the deed on behalf of the City, and staff to open escrow and conclude the transaction.

BACKGROUND

The existing Oceanside Boulevard Lift Station is located adjacent to the Best Western Oceanside Inn on Oceanside Boulevard just east of Vine Street. This aged facility is undersized for current and future capacity demands and is located on a site which is too small to accommodate upgrading.

A study and search was conducted to identify suitable replacement sites for the lift station. The criterion for this study was that the new site would need to be in close proximity to and at roughly the same elevation as the existing facility. The proposed site was selected and determined to be more viable, in terms of economy and efficiency, compared to other vacant parcels in the immediate vicinity of the existing facility.

ANALYSIS

Staff obtained an appraisal of the fair market value of the portion of the property needed for the project. Based on the independent appraiser's conclusion and determination of value a written offer was presented to the property owner, Oceanside Bluffs Investments, LLC, to acquire a 0.5-acre portion of the larger 2.71-acre parcel. Staff then negotiated the terms of a purchase and sale agreement with the owner, the terms of which are as follows:

Price:	Three Hundred Thousand Dollars ($300,000).
Opening Escrow:	Seven (7) days after the agreement is approved by the City Council.
Feasibility Period:	Thirty (30) days after City Council approval of the agreement to approve condition of the property and title to the property.
Escrow Closing:	On or before sixty (60) days from opening escrow.

FISCAL IMPACT

Funds for the purchase price of $300,000 together with related escrow closing and title insurance charges are included in the current approved budget under account 726.865445 which has approximately $488,689 in FY 06-07 carry forward funds and $1,322,082 in FY 07-08 funds. Therefore, sufficient funds are available.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve the purchase and sale agreement in the amount of $300,000 with Oceanside Bluffs Investments, LLC, for the purchase of the easterly 0.5 acre of Assessor Parcel Number 152-320-10 for the relocation of the Oceanside Boulevard Lift Station; and authorize the Mayor to execute the agreement, the City Clerk to accept the deed on behalf of the City, and staff to open escrow and conclude the transaction.

PREPARED BY:

William F. Marquis
Senior Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director

Douglas E. Eddow, Real Property Manager

Greg Blakely, Water Utilities Administrative Manager

Paul Bussey, Interim Financial Services Director

PURCHASE AND SALE AGREEMENT
[AND JOINT ESCROW INSTRUCTIONS]

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of _____, 2007 ("Effective Date",) by and between the CITY OF OCEANSIDE, a municipal corporation of the State of California (hereinafter referred to as the "Buyer"), and OCEANSIDE BLUFFS INVESTMENTS, LLC, a California limited liability company, (hereinafter referred to as the "Seller"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Buyer.

WHEREAS, Seller is the legal and equitable owner of that certain real property as more particularly described in a legal description thereof marked Exhibit "A" and as shown on a sketch thereof marked Exhibit "B", attached hereto and incorporated herein by reference, (the "Property");

WHEREAS, Buyer desires to purchase the Property for the purpose of the Oceanside Boulevard Sewer Lift Station project and has determined that purchasing the property for the purposes set forth herein would be a benefit to the public and in the furtherance of the public purposes of Buyer; and

WHEREAS, if Seller had not voluntarily entered into this Agreement, Buyer would have used its powers of eminent domain to acquire the Property, the threat of the use of such powers is an inducement for Seller to sell the Property directly to Buyer, through negotiations and in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

ARTICLE I
RECITALS

101. Description of Property. Seller is the legal and equitable owner of the entire fee simple interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. For the purpose of this Agreement said real property and the improvements thereon, if any, are collectively referred to as the "Property".

102. Status and Powers of Seller. Seller, composed of various companies and individuals, holding title to the Property as tenants in common, and are authorized by the laws of the State of California to enter into this Agreement and perform the actions and duties of the Seller more particularly described in this Agreement.

103. Status and Powers of Buyer. Buyer is a municipal corporation, in of the State of California, organized and existing pursuant to the Constitution and statutes of the State of California, and is authorized to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller for the construction of a public works project, commonly referred to as the Oceanside Boulevard Sewer Lift Station project, and Seller desires to sell the Property to Buyer for said purposes on the terms and conditions in this Agreement. If Seller had not voluntarily entered into this Agreement, Buyer would have used its powers of eminent domain to acquire the Property, the threat of the use of eminent domain by Buyer is an inducement for Seller to sell the Property directly to Buyer in accordance with the terms and conditions of this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Buyer.

ARTICLE II
DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

ARTICLE III
PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is **Three Hundred Thousand Dollars ($300,000.00)** (the "Purchase Price").

ARTICLE IV
CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 409 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, matter for which Buyer's approval is required, Buyer may:

(a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;

(b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure, with Seller's consent, which consent shall not be unreasonably withheld; or

(c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon opening the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Commonwealth Land Title Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "supporting documents").

Within fifteen days after receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the Close of Escrow. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances. Seller shall be obligated to pay any property taxes and assessments to the date of the Close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance, or, if requested by Buyer, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at close of Escrow, except as set forth pursuant to Section 502 herein; and

(b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the close of Escrow.

405. Physical Condition of the Property. Within thirty (30) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein. Buyer is obligated to investigate, inspect and analyze the condition of title to the Property to its own satisfaction and expressly agrees that in entering into this Agreement, it is relying on its own investigation as to the condition of the Property except as expressly provided herein.

406. Property Documents. Within five (5) calendar days after the date of this Agreement, Seller shall deliver to Buyer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contacts, service contracts, and other documents pertaining to the Property ("Property Documents"). Prior to the close of Feasibility Period pursuant to Section 801 herein, Buyer shall review and approve or disapprove each Property Document. On or before the Close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the

other party under the Property Document in sufficient time to terminate the Property Document prior to the Close of Escrow.

407. Non-foreign Affidavit. If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

408. Seller's Obligations. Seller is obligated to Buyer for performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

409. Seller's Representations. Seller represents to Buyer the truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

410. Buyer's Obligations. Buyer is obligated to Seller for performance by the Buyer of every material covenant, agreement, and promise to be performed by Buyer pursuant to this Agreement and the related documents executed or to be executed by Buyer.

ARTICLE V
SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the Effective Date of this Agreement and as of the Close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Hazardous Substances. To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

504. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

505. Litigation. To the best of Seller's knowledge, there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation

with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

506. Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

507. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

508. Special Studies Zone. The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

509. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

510. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

ARTICLE VI
COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Buyer has duly authorized and executed this Agreement.

(b) Seller is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Seller in accordance with their terms and the terms of this Agreement.

602. No Violation of Other Agreements.

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the

consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the Close of Escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Seller shall hold Buyer harmless from any claims for such fees or commissions claimed by another broker, real estate agent or other third party claiming through Seller.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

ARTICLE VII
ESCROW

701. Establishment of Escrow. Within seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the Escrow Department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Buyer shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened ("Opening of Escrow"). This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Acceptance of Grant Deed. Concurrent with the execution of this Agreement, but no later than the Close of Escrow pursuant to Section 703 herein, Seller shall deliver to Buyer a Grant Deed properly executed and notarized, in recordable form, for the Buyer's acceptance of the conveyance of the Property to Buyer. Within five (5) working days of its receipt Buyer shall affix a certificate of acceptance to the Grant Deed and promptly deliver the complete document to the Escrow Agent. In the event that Seller delivers the Grant Deed to the Escrow Agent without Buyer's certificate of acceptance attached, Seller hereby authorizes the Escrow Agent to release the original Grant Deed to Buyer and Buyer shall likewise affix the certificate of acceptance to the Grant Deed and return the original and complete document to the Escrow Agent within five (5) working days.

703. Closing. Subject to the provisions of this Agreement and no later than Sixty (60) days after the Opening of Escrow ("Closing Deadline") the grant deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

Unless the Close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer, pursuant to the provisions of Section 702 above;

(ii) The original Non-Foreign Affidavit executed by Seller;

(iii) The originals of all Property Documents, except for those documents rejected by Buyer or terminated at the request of Buyer;

(iv) A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;

(v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

(i) The total sum of the Purchase Price for the Property;

(ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and, if an ALTA extended owner's policy is requested by Buyer that portion of the Title Policy in excess of the premium for a CLTA Standard Policy of Title Insurance;

(iii) A certificate executed by Buyer providing that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow;

(iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

705. Closing Costs. Seller shall pay the premium for a CLTA Standard Policy of Title Insurance, if Buyer requests an ALTA extended owner's policy Buyer shall pay the difference between the premium for an ALTA and CLTA policy; Buyer shall pay recording fees, documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property; and Buyer and Seller shall each pay one-half of the Escrow Agent's fee.

706. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. Seller shall pay any sales, use or ad valorem taxes connected with the Close of Escrow for the Property. It is recognized that Buyer is a tax-exempt governmental agency. To the extent that Seller is obligated to pay for gas, electricity, water or other utility charges related to the Property, Seller will cause all utility meters to be read as of Close of Escrow and will be responsible for the cost of all utilities used before Close of Escrow.

707. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the close of Escrow. Buyer shall have thirty (30) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. Within five (5) working days following the full execution of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller. If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole

basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

802. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

803. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

804. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

805. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

806. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

807. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail with First Class postage fully prepaid:

If to Buyer:
City of Oceanside
Attn: William F. Marquis
300 North Coast Highway
Oceanside, CA 92054

Copy to:
City Attorney
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

If to Seller:
Oceanside Bluffs Investments, LLC
$^{C}/_{O}$ John DeWald
1855 Freda Lane
Cardiff by the Sea, CA 92007

Copy to:

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates, or other communications will be sent.

808. Binding Effect. Without waiver of section 803, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

809. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

810. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

811. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

812. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

813. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

814. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

815. Counterpart. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

816. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

817. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

818. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

819. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

820. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

821. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after close of Escrow, and indemnities shall survive the close of Escrow and delivery and recordation of the Grant Deed.

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

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers effective as of (but not necessarily on) the Effective Date.

Buyer:
City of Oceanside, a municipal corporation

By:_____
Mayor

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney

Seller:
Oceanside Bluffs Investments LLC, a California limited liability company

By: John DeWald & Associates, Manager of Oceanside Bluffs Investments LLC

By: _____ Dated: 7/10/07
John DeWald, Manager,
John DeWald & Associates

SELLER'S SIGNATURE(S) MUST BE NOTARIZED. NOTARY USE APPROPRIATE ACKNOWLEDGEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego) SS

On July 10th 2007 (Date) before me, L. Montes, Notary (Name and Title of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared **John DeWald**, [ ] personally known to me [✓] 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/the~~ir signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

L. Montes, Notary L. Montes
Signature of Notary Public

RBG-1 OFFICIAL SEAL L. MONTES NOTARY PUBLIC-CALIFORNIA COMM. NO. 1482968 SAN DIEGO COUNTY MY COMM. EXP. APRIL 13, 2008 RBG-1

EXHIBIT "A"
LEGAL DESCRIPTION

APN: 152-320-10

VESTING:

OCEANSIDE BLUFFS INVESTMENT LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

THAT PORTION OF TRACT 101 OF THE MAP OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY FEBRUARY 7, 1890, DESCRIBED IN GRANT DEED TO JDSK INVESTMENTS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 42.5% INTEREST AND ANDREW LEDERER AND JANET LEDERER, HUSBAND AND WIFE AS TENANTS IN COMMON AS TO AN UNDIVIDED 12.183% AND REVELSTONE OCEANSIDE LLC, AN ILLINOIS LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 24.364% AND OCEANSIDE BLUFFS INVESTMENT LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 20.953% INTEREST; ALL HOLDING TITLE TOGETHER AS TENANTS IN COMMON, RECORDED JULY 27, 2005 AS DOCUMENT NO. 2005-0637285 OF OFFICIAL RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF THE LAND DESCRIBED IN SAID GRANT DEED RECORDED JULY 27, 2005 AS DOCUMENT NO. 2005-0637285, BEING THE MOST NORTHERLY CORNER OF PUTERBAUGH'S ADDITION TO THE TOWN OF OCEANSIDE, BEING ALSO A POINT ON THE SOUTHERLY LINE OF EUCALYPTUS STREET, AS SHOWN ON MAP THEREOF NO. 418 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND AND THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF EUCALYPTUS STREET NORTH 53°15'00" EAST 133.16 FEET TO THE **TRUE POINT OF BEGINNING;**

THENCE LEAVING SAID NORTHWESTERLY LINE SOUTH 21°37'05" EAST 49.49 FEET;

THENCE SOUTH 43°36'31" EAST 167.90 FEET TO THE NORTHWESTERLY BOUNDARY OF A PARCEL OF LAND 80.00 FEET WIDE AS DESCRIBED IN PARCEL 3 OF JUDGMENT IN CONDEMNATION, RECORDED JUNE 1, 1966 AS DOCUMENT NO. 90661 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG SAID NORTHWESTERLY BOUNDARY NORTH 19°03'00" EAST 148.00 FEET TO THE NORTHEASTERLY LINE OF SAID LAND DESCRIBED IN GRANT DEED RECORDED JULY 27, 2005 AS DOCUMENT NO. 2005-0637285 OF OFFICIAL RECORDS;

THENCE ALONG SAID NORTHEASTERLY LINE NORTH 43°21'25" WEST 132.16 FEET TO THE MOST NORTHERLY CORNER OF SAID LAND AND A POINT ON SAID EASTERLY EXTENSION OF THE SOUTHERLY LINE OF EUCALYPTUS STREET;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND AND SAID EASTERLY EXTENSION SOUTH 53°15'00" WEST 114.34 FEET TO THE **TRUE POINT OF BEGINNING.**

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE 80.00 FOOT RIGHT-OF-WAY DESCRIBED AS PARCEL 1 IN GRANT DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 6, 1955 IN BOOK 5595, PAGE 443 OF OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 0.500 ACRES MORE OR LESS

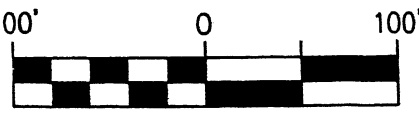
ATTACHED HERETO AND MADE A PART HEREOF THIS LEGAL DESCRIPTION IS A PLAT LABELED EXHIBIT "B"

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

MICHAEL SCHLUMPBERGER, PLS 7790

May 3, 2007
DATE

EXHIBIT "B"



GRAPHIC SCALE
1 INCH = 100 FT.

E'LY EXTENSION OF S'LY LINE EUCALYPTUS STREET

T.P.O.B.

N 53°15'00" E 133.16'

S 21°37'05" E 49.49'

P.O.C.
MOST NORTHERLY CORNER OF PUTERBAUGH'S ADDITION, BEING ALSO A POINT ON THE SOUTHERLY LINE OF EUCALYPTUS STREET AS SHOWN ON MAP 418

S 53°15'00" W 114.34'

N 43°21'25" W 132.16'

PORTION OF R/W PARCEL 1, REC. 4/6/1955 IN BK. 5595, PG. 443 O.R.

S 43°36'31" E 167.90'

N 19°03'00" E 148.00'

NE'LY LINE OF DOC. 2005-0637285 REC. 7/27/2005 O.R.

NW'LY BDY OF PARCEL 3 OF JUDGMENT IN CONDEMNATION, REC. 6/1/1966 AS DOC. NO. 90661 O.R.

80'

EUCALYPTUS STREET

PUTERBAUGH'S ADDITION TO THE TOWN OF OCEANSIDE MAP 418

DOC. NO. 2005-0637285

TRACT 101 OF THE MAP OF SOUTH OCEANSIDE MAP 622

OCEANSIDE BOULEVARD

BOONE STREET

LICENSED LAND SURVEYOR
MICHAEL L. SCHLUMPBERGER
No. 7790
Exp. 12/31/07
STATE OF CALIFORNIA

DENOTES AREA OF ACQUISITION, 0.500 ACRES MORE OR LESS

APN: 152-320-10

NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

Right-Of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
FILE NAME: OsideBlvdLftSta.dwg

CITY OF OCEANSIDE

VESTING: JDSK INVESTMENTS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 42.5% INTEREST AND ANDREW LEDERER AND JANET LEDERER, HUSBAND AND WIFE AS TENANTS IN COMMON AS TO AN UNDIVIDED 12.183% AND REVELSTONE OCEANSIDE LLC, AN ILLINOIS LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 24.364% AND OCEANSIDE BLUFFS INVESTMENT LLC, A CALIFORNIA LIMITED LIABILITY COMPANY AS TO AN UNDIVIDED 20.953% INTEREST; ALL HOLDING TITLE TOGETHER AS TENANTS IN COMMON

DATE: MAY 3, 2007 | SHEET 1 OF 1

EXHIBIT "C"

DEFINITIONS

Seller. The term "Seller" means Oceanside Bluffs Investments LLC, a California limited liability company.

Buyer. The term "Buyer" means the City of Oceanside, a municipal corporation of the State of California.

Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the Mayor, City Manager or any employee designated by the City Manager of Buyer as an Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means John DeWald or any other person or representative designated in writing by John DeWald.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Qualify Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 152-320-10 (Portion) CITY DOCUMENT NO.

NO DOCUMENTARY TRANSFER TAX DUE R&T CODE §11922
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE GOV"T CODE §27383

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

OCEANSIDE BLUFFS INVESTMENTS LLC, a California limited liability company

does hereby GRANT to the CITY OF OCEANSIDE, a municipal corporation, of the State of California, that certain real property situated in the City of Oceanside, County of San Diego, State of California, more particularly described as follows:

SEE LEGAL DESCRIPTION THEREOF MARKED EXHIBIT "A" AND PLAT THEREOF MARKED EXHIBIT "B", RESPECTIVELY ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Dated: July 3, 2007

Oceanside Bluffs Investments LLC, a California limited liability company

By: John DeWald & Associates, Manager of Oceanside Bluffs Investments LLC

By: _____
John DeWald, Manager of John DeWald & Associates

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego) SS

On July 10th, 2007 (Date) before me, L. Montes, Notary (Name and Title of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared **John DeWald**, [ ] personally known to me [✓] 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.

WITNESS my hand and official seal.

L. Montes, Notary L. Montes
Signature of Notary Public

OFFICIAL SEAL
L. MONTES
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1482968
SAN DIEGO COUNTY
MY COMM. EXP. APRIL 13. 2008

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