



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: April 19, 2016

Agenda Item COH

Approvals:

City Manager JA
Dept. Head DEE
Attorney SS
Finance JV

Department: Public Works / Engineering Division
Prepared By: Amir K. Ilkhanipour, Senior Civil Engineer

Subject: ***APPROVAL OF PURCHASE AGREEMENT WITH G COMPANIES MANAGEMENT, LLC FOR A WATER LINE EASEMENT FOR A NEW WATER LINE BETWEEN RESERVOIRS 6 AND 10, PROJECT No. 15401.***

Fiscal Impact: Yes. There is adequate funding for the negotiated \$7,100 purchased amount within the project budget of \$317,580 from the Water Acreage Fee Reserve.

Summary: Staff recommends the City Council approve the Purchase Agreement with G Companies Management, LLC to purchase an easement in the amount of \$7,100 for a new water line between Reservoirs 6 and 10.

**Background/
Discussion:**

Reservoir 6 is nearing the end of its useful life (i.e. 3-5 years remaining). This reservoir should be replaced with a new reservoir or abandoned with the installation of a new water line between Reservoirs 10 and 6 to connect the two hydraulic zones. Prior to construction of a new potable water line, two easements need to be secured. The new water line, at approximate cost of \$425,000, will benefit the City in two ways. First, it eliminates the need to replace the deteriorating Reservoir 6 estimated at \$600,000. Secondly, it provides a needed water system loop for additional reliability. It is standard practice to have looped systems in the water networks to improve reliability of the system and minimize customer interruptions in the event system repairs are needed. This area is the only location within the City's potable water system that does not have a redundant supply loop to a reservoir. Staff recommends securing the needed easements for construction of the new water line in lieu of replacing the deteriorated Reservoir 6.

The project will require easements on two properties for the new water line. G Companies Management, LLC is one of the property owners. Based on an appraisal value of \$7,100 for the easement, Best Best & Krieger Attorneys at Law negotiated a purchase price of \$7,100. Staff is recommending the Council to approve the Purchase Agreement with G Companies Management, LLC to be followed by executing an easement deed (copy attached) provided by G Companies Management, LLC.

Best Best & Krieger has also been in contact with the other property owner regarding the acquisition of the second parcel. Staff is anticipating bringing this matter to the Council on May 17, 2016.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor to execute the Purchase Agreement for acquiring an easement for a new water line between Reservoirs 6 and 10;
2. Authorize payment of \$7,100 to G Companies Management, LLC for purchasing the easement for a new water line between Reservoirs 6 and 10; and
3. Authorize the City Manager to execute all documents in the name of the City of San Clemente necessary to complete the purchase and record the easement on behalf of the City.

Attachments: 1. Location Map
2. Purchase Agreement

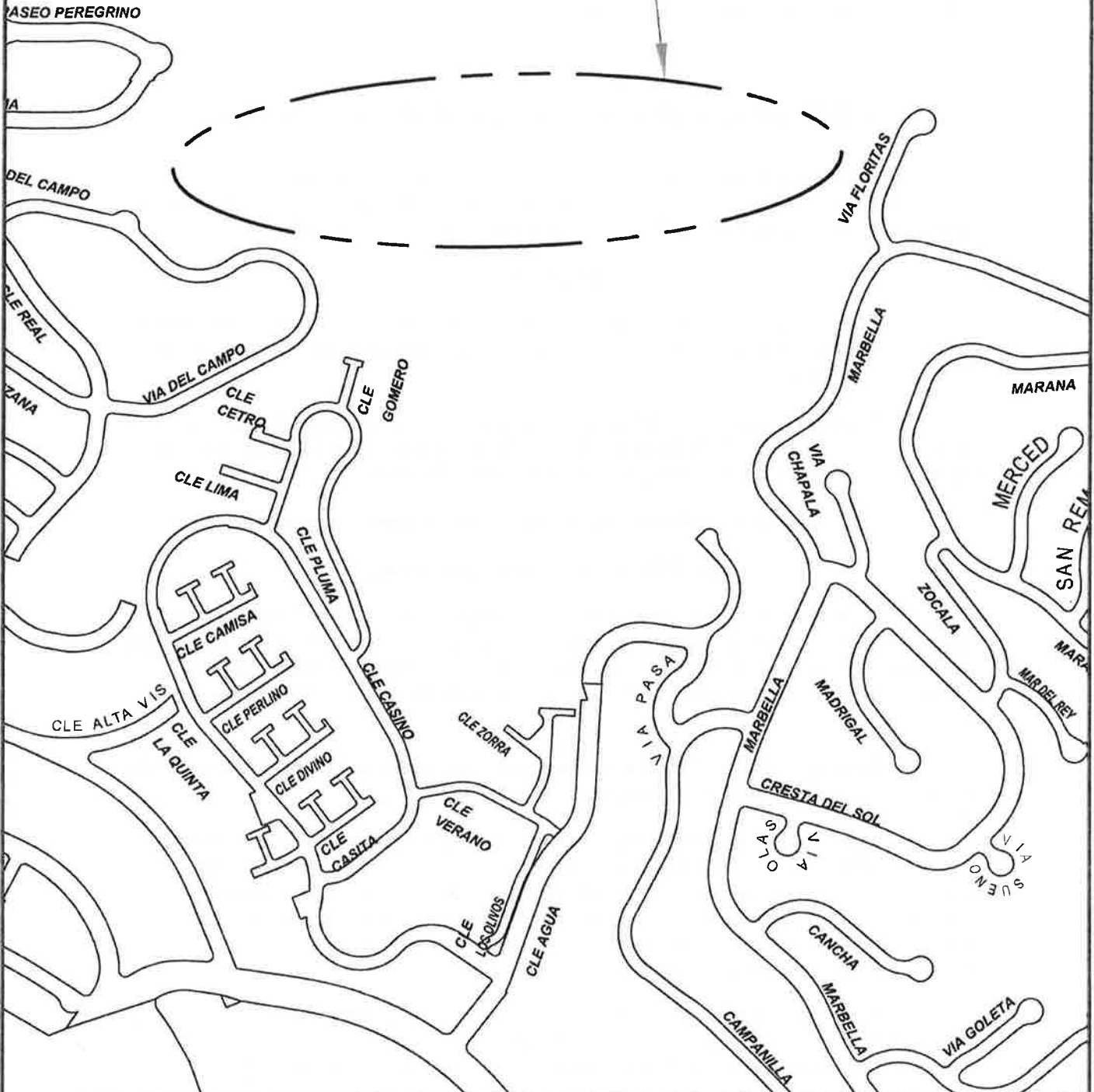
Notification: None.

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NOT TO SCALE

**PROJECT
LOCATION**



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City of San Clemente

910 Calle Negocio, Suite 100
San Clemente, CA 92673
Tel (949) 361-6100
Fax (949) 361-8316

LOCATION MAP
Reservoirs 6 & 10
Water Line
P.N. 15401

19-16 / 6H-3

PROPERTY OWNER: G Companies Management, LLC
ASSESSOR'S PARCEL NO.: 675-321-13; 675-391-21; and 675-401-28
ADDRESS: 1105 Quail Street, Newport Beach, California 92660

AGREEMENT FOR ACQUISITION OF REAL PROPERTY

This agreement is entered into this ____ day of January, 2016, by and between City of San Clemente (hereinafter called "Buyer"), and G Companies Management, LLC (hereinafter called "Seller") for acquisition by Buyer of certain real property as stated below.

RECITALS

A. Buyer is a public agency of the State of California. Buyer is vested by law with the authority to purchase real property or any interest in real property necessary to carry out any of its powers or functions.

B. Seller is the owner of real property designated as Assessor Parcel Numbers 675-321-13; 675-391-21; and 675-401-28 located in the Southwest boundary of the City of San Juan Capistrano, California, which is being acquired by Buyer ("Property").

C. The parties agree to the sale and purchase of the Property as set forth below.

AGREEMENT TO PURCHASE

1. **AGREEMENT TO SELL AND PURCHASE:** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, upon the terms and for the consideration set forth in this Agreement, the real property situated in the City of San Juan Capistrano, County of Orange, State of California and legally described in the Easement Deed, **Exhibit A** attached hereto and by reference herein.

2. **PURCHASE PRICE:** The total purchase price, payable in cash through escrow, will be the sum of Seven Thousand One Hundred dollars (\$7,100.00).

3. **THREAT OF CONDEMNATION:** The parties acknowledge that the sale of the Property to Buyer is under threat of condemnation, and if Buyer did not sell, the Property would ultimately have been considered for condemnation for public purposes. The parties also acknowledge that the purchase price includes all compensation and claims Seller would otherwise be entitled under Eminent Domain Law, including Relocation Assistance, if applicable, under Government Code section 7260 et seq.

4. **CONVEYANCE OF TITLE:** Seller agrees to convey by a Deed, substantially the same as **Exhibit A**, title free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes, current and delinquent, as required by Buyer.

5. **TITLE INSURANCE POLICY.** Escrow Agent will, following recording of deed to Buyer, provide Buyer with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$7,100.00, showing title to the Property vested in Buyer, subject only to the exceptions set forth in Paragraph 4 and the printed exceptions and stipulations in said policy.

6. **ESCROW:** Buyer agrees to open escrow in accordance with this Agreement and shall provide Seller with written notice of the Escrow Company to be used.

7. **DEPOSIT OF DEED:** Seller will execute and deposit in Escrow a deed, to Buyer, in form substantially the same as **Exhibit A** of this Agreement. As soon as Escrow has received the Seller's deed, Buyer agrees to deposit with Escrow the purchase price for the Property. Seller and Buyer agree to deposit with Escrow any additional instruments or funds as are necessary to close escrow.

8. **DEPOSIT OF FUNDS:** All funds received in Escrow will be deposited with other escrow funds in a general escrow trust account and may be transferred to any other such escrow trust account in any state or national bank doing business in the State of California. Funds will be placed in an interest-bearing account, with interest accruing to Buyer. All disbursements will be made by check from such account.

9. **INSURANCE CANCELLATION:** Insurance policies for fire or casualty are not to be transferred, and Seller will cancel his own policies after close of escrow.

10. APPORTIONMENT OF TAXES:

a. The term "Date of Apportionment" will refer to the date that the conveyance is made to Buyer is recorded or, if the County Tax Collector and Assessor deem it acceptable, the date on which the Grant Deed was accepted by Buyer, whichever is earlier.

b. Escrow Agent will, on behalf of Buyer, send the County Assessor, Auditor, and Tax Collector letters, asking these agencies to cancel taxes on the acquired subject property by a public agency for the remaining portion of the fiscal year after the date of apportionment.

c. Escrow Agent will forward to County Assessor, Auditor, and Tax Collector letters, asking these agencies to cancel taxes on the acquired subject property by a public agency for the remaining portion of the fiscal year after the date of apportionment.

d. Seller will be liable for any unpaid taxes, including any penalties or costs, levied for prior tax years constituting a lien at the date of apportionment. Either Seller will pay Escrow sufficient funds to cover any such lien, or Escrow will deduct the amount of such liens from proceeds of sale prior to remittance to Seller. Escrow will forward such amount to the County as part of the process of closing Escrow.

e. Taxes shall be apportioned, if necessary, consistent with the provisions of the Revenue and Taxation Code.

11. ESCROW DUTIES:

- a. Escrow shall pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy paragraph 4 of this Agreement.
- b. Escrow shall disburse funds and deliver deeds when buyer and seller have fulfilled conditions of escrow.
- c. Close of Escrow shall occur upon recording of the instrument of transfer.

12. ESCROW FEES, CHARGES AND COSTS: Buyer agrees to pay all fees, charges and costs which arise in Escrow, except those to place title in condition necessary to satisfy paragraph 4 of this Agreement.

13. LEASES: Seller warrants that there are the following rental/lease agreements on the Property:

None.

Seller warrants there are no other leases, written or oral, on any portion of the Property. Seller further agrees to hold Buyer harmless and reimburse Buyer for any and all losses and expenses occasioned by reason of any lease of said Property except leases described above.

14. MAINTENANCE: During escrow, Seller agrees to continue to maintain the Property in a condition equal to or better than the condition existing at the time of this Agreement.

15. NOTICES: Any notice, which either party may desire to give to the other party, must be in writing and may be given by personal delivery or by First Class Mail at the address of such party set forth below or such address as the parties may hereinafter designate by giving notice in the manner provided for herein. Any notice given by mail will be deemed given forty-eight (48) hours after such notice is deposited in the United States Mail, addressed as provided, with postage fully prepaid.

To Seller:

G Companies Management LLC
1105 Quail Street
Newport Beach, California 92660
c/o David Gianulias

To Buyer:

City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, California 92673
c/o Amir Ilkanipour, Senior Civil Engineer

16. COST OF SUIT: In the event of any litigation, arbitration, any quasi-judicial, or administrative proceeding between the parties herein to: (I) enforce any provision of this

Agreement; (2) enforce any remedy available under default within this Agreement; or (3) seek a declaration of the rights of either party on each party's respective interests in the Property, the prevailing party will be entitled to recover from the other such attorney's fees, and costs as may be reasonably incurred.

17. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which so executed will, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together will constitute one and the same instrument.

18. **CLOSING STATEMENT:** Seller instructs Escrow to release a copy of Seller's closing statement to Buyer.

19. **HAZARDOUS SUBSTANCES DISCLOSURE:** Seller acknowledges the requirement to disclose to Buyer the presence of any Hazardous Substance that Seller knows or has reasonable cause to believe may be located on or beneath the Property. "Hazardous Substance" means any substance material or product that is, or in sufficient quantities or concentrations may be, harmful to human health or the environment due to flammability, toxicity, reactivity, infectiousness, carcinogenicity, or corrosiveness, including, but not limited to, any Hazardous Substance as defined in California Health and Safety Code section 25316 or the regulations implementing such section; petroleum and petroleum products; and asbestos. Seller represents and warrants to Buyer that the information set forth in the Environmental Questionnaire and Disclosure Statement delivered by Seller to Buyer is true and correct and discloses all Hazardous Substances which Seller knows or has reasonable cause to believe are located on or beneath the property.

20. **PROPERTY INVESTIGATIONS:** Buyer may, at Buyer's option and expense, undertake a property investigation prior to close of Escrow to determine the nature and extent of any Hazardous Substance present at or near the Property. Buyer and its designated agents, consultants or employees will have right of access to the Property during mutually agreed upon hours to perform a property investigation. The property investigation may include, but is not limited to, soil, ground water and other engineering or geological tests or physical inspections as necessary to determine the nature and extent of any Hazardous Substance at or near the Property. Buyer's obligation to purchase the Property is subject to Buyer's approval of the condition of Property. In the event that Buyer determines, in Buyer's absolute discretion, that the Condition of Property is not satisfactory, Buyer may terminate this Agreement by giving written notice to Seller and Escrow Agent.

21. **INDEMNITY:** Seller agrees to indemnify, defend with counsel selected by Buyer, and hold Buyer, its officers, employees, agents, assigns and successors from and against all claims, damages, costs, response costs, losses, fines, penalties, charges, and expenses (including attorneys' fees and costs) of any kind whatsoever paid, incurred or suffered by or asserted against any indemnified party or the Property arising from or attributed to the existence of any Hazardous Substance upon the Property or any repair, cleanup, or disposal of any Hazardous Substance on, under or about the Property or the preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Property. The foregoing indemnity will survive the close of escrow and transfer of title to the Property to the Buyer.

22. **ATTORNEYS' FEES:** In the event of enforcement of the Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees.

23. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation made by either party if not contained in this Agreement.

On the basis of the above, the Parties agree to the terms stated.

SELLER:

Dated: _____

By: _____

Its: _____

BUYER:

Dated: _____

By: _____

Its: _____