

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 03/27/2012

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Sale of approximately 436 square feet of land located adjacent to 5510 La Jolla Boulevard, San Diego, California 92037

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Mary Carlson/619-236-6079, MS-51A

DESCRIPTIVE SUMMARY OF ITEM:

Authorize the sale of 436 square feet (0.010 acre) of vacant land located next to a private alley adjacent to 5510 La Jolla Boulevard, San Diego, California 92037, to the adjacent property owners, Chin-Zong Tsai and Chin-Chiang Tsai, husband and wife as joint tenants, for Twenty-Six Thousand Six Hundred Dollars (\$26,600).

STAFF RECOMMENDATION:

Approve the Resolution.

ITEM BACKGROUND:

The 436 square foot property ("Property") was acquired by the City of San Diego in 1952, apparently to widen the alley. However, the majority of the alley is owned in fee simple by the residential property owners on the west and is private property. The Property is landlocked and not developable.

The Property is adjacent to 5510 La Jolla Boulevard, San Diego, California 92037. The adjacent property owners, Chin-Zong Tsai and Chin-Chiang Tsai, husband and wife, would like to purchase the Property. The Property was appraised by an independent MAI appraiser in November 2011. The market value of the property was determined to be \$26,600.

Pursuant to Council Policy 700-10, an exclusively negotiated sale is justified because the Property is landlocked and the sale to the adjacent property owner would correct a site deficiency. The City does not have a foreseeable use for the Property.

The City has entered into a purchase and sale agreement for the sale of the Property, subject to City Council approval.

FISCAL CONSIDERATIONS:

Proceeds from the sale of the Property, net of costs related to its sale, will be deposited in the Capital Outlay Fund 400002, as per City Charter Article VII.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This action is exempt pursuant to EOCP Memo dated 11/14/11.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This item will be heard at the April 11, 2012 Land Use and Housing meeting.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders would be the City of San Diego and Chin-Zong Tsai and Chin-Chiang Tsai.

Barwick, James

Originating Department

Deputy Chief/Chief Operating Officer

City Property Adjacent to 5510 La Jolla Blvd



REAL ESTATE PURCHASE AND SALE AGREEMENT

[APN 357-531-11]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made by and between THE CITY OF SAN DIEGO, a California municipal corporation (“CITY”), and CHIN-ZONG TSAI AND CHIN-CHIANG TSAI, husband and wife as joint tenants (“BUYER”), to be effective as of the date of execution by CITY (the “Effective Date”), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

Purchase and Sale; Property. Under the terms and conditions of this Agreement, CITY shall sell and convey to BUYER, and BUYER shall purchase from CITY, CITY’s fee estate in that certain real property (the “Property;” APN 357-531-11) located in the alley behind 5510 La Jolla Blvd, San Diego, California, comprised of approximately 0.01 acres of land. The Property is more particularly described in the form of grant deed attached hereto as **Exhibit A: Grant Deed**.

1. City Council Action Required. BUYER acknowledges that the closing of the transaction contemplated by this Agreement (the “Closing”) is expressly conditioned on the San Diego City Council’s (the “City Council’s”) prior authorization to sell the Property under this Agreement (“Council Authorization”), which may or may not be granted. CITY shall not be obligated for any loss, financial or otherwise, incurred by BUYER as a result of the City Council’s failure to grant the Council Authorization. BUYER expressly waives any claim for expense or loss which BUYER incurs as a result of the failure to obtain Council Authorization.
2. Purchase Price. The purchase price of the Property (“Purchase Price”) shall be Twenty Six Thousand Six Hundred Dollars (\$26,600).
3. Escrow. Buyer shall open an escrow (the “escrow”) with Chicago Title Company (the “Escrow Holder”) within three (3) business days after the Effective Date. The Escrow shall be deemed open as of the date (the “Open Date”) that BUYER delivers to Escrow Holder both this Agreement, signed by the parties, and the Deposit, defined below. Escrow Holder is located at 701 B Street, Suite 760, San Diego, CA 92101.
4. Due Diligence Period. BUYER shall have twenty (20) days after the Open Date (the “Due Diligence Period”) to conduct its due diligence to determine, in BUYER’S sole discretion, the feasibility of purchasing the Property and to resolve any matters that, if not corrected, would cause BUYER to terminate this Agreement (“BUYER’S Contingencies”). BUYER may waive the Due Diligence Period at any time.
 - 4.1. Records Review. Upon reasonable prior notice to CITY, BUYER may review records in the possession and control of CITY’S Real Estate Assets Department pertaining to the Property. CITY’S Real Estate Assets Department shall make such records available to BUYER within one (1) day after BUYER’S request. BUYER acknowledges that additional Property-related records may be in the possession and control of other CITY departments, including without limitation the Development Services Department.

BUYER shall be solely responsible for contacting such other CITY departments to schedule a review of such additional records.

- 4.2. Notification Regarding BUYER'S Contingencies. BUYER shall notify CITY of any BUYER'S Contingencies it will waive or which will not be satisfied within the Due Diligence Period. BUYER'S failure to so notify CITY within the Due Diligence Period shall mean no BUYER'S Contingencies exist.
- 4.3. Preliminary Title Report Approval. CITY, at CITY'S expense, shall deliver to BUYER a Preliminary Title Report for the Property. BUYER shall provide written disapproval of the Preliminary Title Report within ten (10) days after receipt thereof. BUYER'S failure to so provide such written disapproval shall be deemed BUYER'S approval of the Preliminary Title Report.
- 4.4. BUYER'S Reports. If the Closing does not occur for any reason other than CITY'S default of this Agreement, then at CITY'S request BUYER shall deliver to CITY at no charge copies of all surveys, engineering studies, soil reports, maps, master plans, feasibility studies and other similar items prepared by or for BUYER and pertaining to the Property.
5. Entry. Subject to the prior written consent of CITY, BUYER, or BUYER'S agent(s), may enter upon the Property for the purpose of conducting environmental studies, surveys, and other examinations as BUYER reasonably deems necessary to complete BUYER'S due diligence.
6. Deposit.
 - 6.1. Deposit. Upon opening of escrow, BUYER shall deliver to Escrow Holder Five Thousand Dollars (\$5,000; the "Deposit") either in cash, by cashier's check, or other readily available federal funds delivered to Escrow Holder. Except as otherwise provided herein, the Deposit shall become non-refundable at the end of the Due Diligence Period and shall be applied to the Purchase Price if the Closing occurs.
 - 6.2. If at any time during the Due Diligence Period BUYER decides not to purchase the Property, the Deposit shall be returned to BUYER upon BUYER'S request to Escrow Holder.
 - 6.3. Council Authorization. CITY shall seek Council Authorization within 120 days after the Due Diligence Period and when no BUYER'S Contingencies exist. If the City Council votes to deny Council Authorization, this Agreement shall terminate and the Deposit shall be returned to BUYER upon BUYER'S request to Escrow Holder. CITY shall not be obligated for any loss, financial or otherwise, incurred by BUYER as a result of the City Council's denial of the Council Authorization. BUYER expressly waives any claim for expense or loss incurred by BUYER as a result of such denial.

7. Close of Escrow. The Closing shall be held at Escrow Holder's offices within seven (7) days following the date the Mayor or his designee signs a valid resolution by the City Council authorizing this Agreement.
 - 7.1. Balance of Purchase Price. Prior to the Closing, BUYER shall deposit the balance of the Purchase Price either in cash, by cashier's check, or other readily available federal funds delivered to Escrow Holder.
 - 7.2. Parties to Sign Documents. Prior to the Closing, the parties shall execute and deliver all instruments and documents reasonably required by the other party and the Escrow Holder to effect the Closing.
 - 7.3. Taxes. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing, effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, CITY shall not be responsible for any increase in ad valorem taxes resulting from improvements made to the Property by BUYER after the Closing Date.
8. Title. At the Closing, CITY shall convey title to the Property to BUYER or BUYER'S nominee by a grant deed substantially in the form attached hereto as **Exhibit A: Grant Deed**, subject to all acts done or suffered by BUYER, or claims made by, through, or under BUYER. To the actual knowledge of CITY'S Real Estate Assets Department without further inquiry, there are no unrecorded liens, leases, or encumbrances against the Property.
9. Escrow Costs. CITY shall pay: (a) Preliminary Title Report fees; (b) all San Diego County documentary transfer taxes; (c) the fee for a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy; (d) all charges for CITY'S document drafting and recording; and (e) one-half (1/2) of the Escrow Holder's fee. BUYER shall pay: (a) one-half (1/2) of the Escrow Holder's fee; (b) the incremental cost of any additional or extended-coverage title insurance beyond a CLTA Title Insurance Policy, if requested by BUYER; and (c) all charges for BUYER'S document drafting and recording. The Escrow Holder shall prorate fees and costs between the parties at the Closing.
10. Legal Access. BUYER acknowledges that the property does not have legal access from the alley.
11. Acceptance of Property "As-Is". BUYER acknowledges it is purchasing the Property "as-is," excepting any claims or liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. BUYER is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected officials, officers, employees,

representatives, and agents with respect to the physical condition of the Property, or with respect to the existence or absence of hazardous substances in, on, under, or affecting the Property. CITY has not and does not make any warranty or representation regarding the fitness of the Property for any particular use, or as to its quality or merchantability. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations, or information, either express or implied, pertaining to the Property and made or furnished by any real estate agent, broker, employee, servant, or other person representing or purporting to represent CITY, except as made in this Agreement.

- 11.1. "Hazardous Substances". "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is hereby incorporated into this Agreement.
- 11.2. Indemnity and Hold Harmless. BUYER shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with environmental liabilities caused by BUYER'S use and occupancy of the Property at any and all times prior to the Closing.
- 11.3. BUYER'S Waiver. Notwithstanding any provision of this Agreement to the contrary, if CITY makes any representation or warranty regarding the Property and BUYER learns that such representation or warranty is or might be untrue prior to the Closing and BUYER elects to purchase the Property anyway, then BUYER shall be deemed to have waived any right to bring an action or proceeding against CITY, its agents, employees, or brokers regarding the representation or warranty.
- 11.4. Sophistication of BUYER. BUYER represents and warrants it is a sophisticated buyer familiar with the ownership and operation of real estate projects similar to the Property and that it will acquire the Property solely on the basis of and in reliance on its own examinations and the title insurance protection obtained pursuant to this Agreement, and not on any information provided or to be provided to BUYER by CITY. BUYER agrees that the BUYER'S Due Diligence Period will provide BUYER adequate opportunity to complete all physical and economic examinations of the Property and its operation as BUYER requires.
- 11.5. Property Information. Information regarding the Property and its operation provided to BUYER by CITY shall be deemed only an accommodation to BUYER. CITY will not and shall not be obligated to make any investigation or verification of any information provided to BUYER, regardless of the source of such information. CITY makes no representation, and expressly disclaims any responsibility for the accuracy or completeness of such information.

11.6. Encroachments. Notwithstanding that BUYER is purchasing the Property "as-is," BUYER may terminate this Agreement at any time prior to the Closing if the Property has not been cleared of encroachments.

12. Release. With the exception of any claims arising from CITY'S fraud or intentional misrepresentation, effective from and after the Closing, BUYER, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which BUYER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property, or the condition of the Property, including without limitation, any and all known or unknown claims resulting from the alleged acts or omissions of CITY, its elected officials, officers, representatives, agents or employees.

12.1. Section 1542 Waiver. BUYER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise from CITY'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against CITY arising from this Agreement, the Property, or the condition of the Property, and which exist as of the Closing, but of which BUYER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect BUYER'S decision to enter into this Agreement and complete the Closing. BUYER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

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

Waived by: CHIN-ZONG TSAI AND CHIN-CHIANG TSAI,
husband and wife as joint tenants

BY: 
CHIN-ZONG TSAI

BY: 
CHIN-CHIANG TSAI

13. No Real Estate Commission. BUYER and CITY each represent, warrant, and acknowledge that no real estate commission, finder's fee, or broker's fee has been or will be incurred or paid by either party in connection with the purchase and sale of the Property under this Agreement. The rights and obligations of BUYER and CITY pursuant to this section shall survive the Closing or termination of this Agreement.
14. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter section 225, BUYER shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of their interest.
15. Default and Remedies.
 - 15.1. CITY'S Pre-Closing Default. If CITY is in default of this Agreement prior to the Closing, BUYER may, at its option and as its exclusive remedy for such default, either: (a) terminate this Agreement by written notice to CITY and Escrow Holder; or (b) if the default resulted from a failure to transfer possession and title to the Property to BUYER at the Closing, seek and enforce specific performance of this Agreement.
 - 15.2. CITY'S Post-Closing Default. BUYER may seek and enforce any remedy available at law or in equity: (a) if CITY defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. Notwithstanding the foregoing, CITY shall not be liable for any consequential or punitive damages.
 - 15.3. BUYER'S Default. If BUYER is in default of this Agreement at any time, CITY may terminate this Agreement by written notice to BUYER and Escrow Holder, and/or seek and enforce any other remedy available at law or in equity.
 - 15.4. Limited Liability. CITY'S liability for damages resulting from or under this Agreement shall be limited to either the Property or to BUYER'S funds received by CITY, and without resort to any other CITY assets.
16. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.
17. Interpretation. This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The

term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California and the City of San Diego.

18. CITY'S Consent, Approval. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor").
19. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.
20. Successors and Assigns. The provisions of this Agreement shall inure to and bind the successors and assigns of the parties, except for a bona fide purchaser not affiliated in any way with BUYER.
21. Assignment. This Agreement may not be assigned in whole or in part by BUYER without CITY'S prior written consent.
22. Attorney Fees & Costs. If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
23. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

CITY: THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

With a copy by First Class Mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101

BUYER: CHIN-ZONG TSAI AND CHIN-CHIANG TSAI,
husband and wife as joint tenants
Attn: Gene Tsai
1521 Virginia Road
San Marino, CA 91108

24. Partial Invalidation. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

25. Waiver. The Property is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of BUYER'S obligations under this Agreement, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
26. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and BUYER, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of BUYER or any other party or entity.
27. Survival. Any obligation which accrues under this Agreement prior to the Closing or its termination shall survive the Closing or such termination.
28. Entire Agreement. This Agreement represents the entire agreement between the parties for the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.
29. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

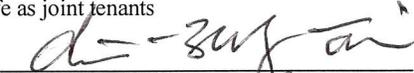
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30. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 2/27/12

CHIN-ZONG TSAI AND CHIN-CHIANG TSAI, husband and wife as joint tenants

BY: 

Name: Chin-Zong Tsai

Title: owner

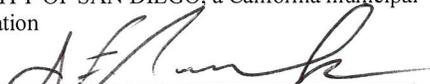
BY: 

Name: Chin-Chiang Tsai

Title: owner

Date: 3/6/12

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets Department

Approved as to form and legality:

JAN L. GOLDSMITH, San Diego City Attorney

BY: 

Name: **Brock Ladewig**

Title: **Deputy City Attorney**

Exhibit A: Grant Deed

Exhibit A: Grant Deed

Recording requested by
The City of San Diego

When Recorded Mail to:
OFFICE OF THE CITY CLERK
THE CITY OF SAN DIEGO
202 "C" ST., 2ND FLOOR, MS 2A
SAN DIEGO, CA 92101

APN 357-531-11

SPACE ABOVE FOR RECORDER'S USE.
NO RECORDING FEE DUE: CALIF. GOV. CODE §6103

GRANT DEED

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged,

THE CITY OF SAN DIEGO, a California municipal corporation ("**GRANTOR**"),

HEREBY GRANTS TO

CHIN-ZONG TSAI AND CHIN-CHIANG TSAI, husband and wife as joint tenants
("**GRANTEE**"),

ALL THAT REAL PROPERTY (the "Property;" APN 357-531-11) located in the alley behind 5510 La Jolla Boulevard, San Diego, California 92037, comprised of approximately 0.01 acres of land, together with all rights and appurtenances thereto. The Property is more particularly described as follows:

insert legal description of property...

San Diego City Council Authorizing Resolution No. R-_____

Date of Final Passage: _____

GRANTOR: THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Approved as to form and legality:

Name: _____

Title: _____

JAN I. GOLDSMITH, San Diego City Attorney

BY: _____

Name: _____

Title: _____

