

## **EASEMENT PURCHASE AGREEMENT**

THIS EASEMENT PURCHASE AGREEMENT ("Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between SDCF Holdings Corporation ("Seller" or "Owner"), and the City of Chula Vista, a municipal corporation ("Purchaser" or "City").

### **RECITALS**

WHEREAS, Seller is the owner of certain real property located at 276-294 Zenith Street in the City of Chula Vista, California, more specifically described in Exhibit "A" and shown on a plat designated as Exhibit "B", which are attached to and incorporated into this Agreement this reference (the "Property"); and

WHEREAS, City desires to acquire an easement over, under, across, within, and through the Property, as more particularly described in Exhibit "C" hereto attached and incorporated by reference, for the easement purposes described herein; and

WHEREAS, Seller desires to sell and City desires to purchase the Easement (as defined below) upon the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I GRANT OF EASEMENT**

1.1 Grant of Easement. Seller agrees to sell and grant to Purchaser an easement over, under, across, within, and through a portion of the Property, as more particularly described in Exhibit C, for the Easement Purposes ("Easement") on the terms and conditions set forth in this Agreement.

1.2. Deed. The Easement shall be conveyed by deed, free and clear of all liens, but subject to all encumbrances, easements, matters of survey and restrictions of record. The Deed of Easement, a draft of which is hereto incorporated by reference and attached as Exhibit B (the "Deed"), will be recorded Official Records of the San Diego County recorder.

**ARTICLE II  
DESCRIPTION OF EASEMENT**

2.1. Easement Purposes. "Easement Purposes" collectively means use of the Property as is necessary, desirable or advisable for the following purposes:

a. for Street and Public Utility purposes on, over, under, across, and through.

2.2. Character of Easement. The Easement is exclusive to City and includes the absolute right of City to use the Easement for the Easement Purposes, which use must not be disturbed, interrupted or impeded in any manner while this Agreement is in effect.

2.3. Term. The Easement will be an easement in perpetuity for the benefit of City, its successors, and assigns.

**ARTICLE III  
PURCHASE PRICE**

3.1. Purchase Price. In consideration of the grant of the Easement, City will pay to Seller the sum of **one thousand three hundred seventy dollars (\$1,370.00)**.

3.2. Manner of Payment. Payment of the Purchase Price shall be delivered in the form of a City check, or by wire transfer of funds at Closing.

**ARTICLE IV  
CLOSING**

4.1. Time and Place. The close of escrow for the Easement purchase ("Closing") shall be held at City of Chula Vista, Civic Center, Building B (276 Fourth Ave., Chula Vista, CA 91910) after all the conditions and obligations of the parties of this Agreement are met.

4.2. Conditions to Closing. City's obligations under this Agreement are subject to the satisfaction of the following conditions as of the date of Closing (or as of such earlier date specified):

a. *Title Matters*. City shall have obtained a commitment (the "Title Commitment") for issuance of an ALTA Owner's Policy of Title Insurance (the "Title Policy"). In the event that the Title Commitment and/or any other physical survey obtained by City discloses defects of title or other matters unsatisfactory to City, City shall notify Owner in writing (an "Objection Notice") on or before the sixtieth (60th) day after

the date of complete execution of this Agreement, of such title defects or other matters to which City objects. Owner covenants that it shall cure all title objections which may be cured by execution of a document requiring the signature of no party other than Owner (including any affidavits which may reasonably be required by the title insurer).

- b. *Representations and Warranties.* Owner's representations and warranties, as set forth in Article IV shall be true and correct and unbreached in all material respects as of the date of Closing.

4.2 Closing Costs. City shall pay all required recordation fees to record the Deed. City and Owner shall pay all costs of title insurance, survey, due diligence reports, and similar inspections. Each party hereto shall pay its own attorney's fees.

4.3 Items to be Delivered by Owner. At Closing Owner shall deliver to City the Deed of Easement provided for in Article I hereof.

4.4 Right of Entry. City and City's authorized representatives may at any reasonable time and after giving reasonable notice to Owner, enter upon the Property for the purpose of making inspections, appraisals, surveys, including the cutting of Survey lines and putting up markers and driving stubs and stakes, site analysis, engineering studies, core sampling for engineering reports, and locating existing rights of way, easements, and utilities. City will exercise this right of entry in such a way so as to not cause unreasonable damage to the Property. City agrees, to the extent permitted by law, to indemnify, defend, and save harmless the Owner from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by any action or omission of City or its agents. Owner agrees to indemnify and save harmless the City from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by action or omission of Owner or its agents.

## **ARTICLE V**

### **OWNER'S REPRESENTATIONS AND WARRANTIES**

Owner hereby makes the following warranties, representations and covenants with respect to the Property

5.1 Leases and other Agreements. At the time of closing, there shall be no written or unwritten agreements recorded or unrecorded, affecting or relating to the use of the easement.

5.2. Litigation. There is no claim, action, suit, investigation or proceeding, at law, in equity or otherwise, now pending or, to the best of Owner's knowledge, threatened against Owner, or with respect to the Property, to which City might become a party. Owner is not subject to the terms of any decree, judgment or other action of any court, administrative agency or arbitrator, which has or could result in a material adverse effect on the Property or Owner's obligations hereunder.

5.3. Governmental Requirements. Owner has not received any notice of violation of any federal, state, city, or other governmental order or requirement issued by any governmental body or by any action in any court, against or affecting the Property that has not been fully complied with in all respects to the satisfaction of the governmental authority having jurisdiction.

5.4. Assessments. There are no unpaid special assessments which affect the Easement.

5.5. No Conflict. Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the easement to City, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Owner is bound.

5.6. Owner's Authority. Owner has full power to enter into this Agreement and to perform its obligations hereunder.

**ARTICLE VI  
NOTICES**

All notices called for hereunder shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested, if to:

OWNER      SDCF Holdings Corporation

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

CITY      \_\_\_\_\_ Date: \_\_\_\_\_  
William S. Valle, P.E.,  
Director of Engineering & Capital Projects/City Engineer  
276 Fourth Avenue, Chula Vista, CA 91910

or to such other address as the party to receive such notice may hereafter request by written notice to the other.

**ARTICLE VII  
MISCELLANEOUS**

7.1      Time is of the Essence. Time is of the essence of each and every term, condition, and provision of this Agreement.

7.2      No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under this Agreement.

7.3      Further Assurances. Each of the parties, shall, at its own expense, execute, acknowledge and deliver any further documents and instruments reasonably requested by the other party and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party for the purpose of carrying out the terms of this Agreement.

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

instrument. Facsimile signatures are acceptable provided they are followed by hard copy originals within five days

7.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and bind Owner, Bank, Escrow Holder, and their respective successors and assigns.

7.6 Entire Agreement. This Agreement contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Agreement shall be of no force or effect.

7.7 Amendments and Waivers. This Agreement may not be amended or altered except by an instrument in writing executed by the parties. No waiver of any breach of a provision of this Agreement shall be deemed a waiver of any other provision. No waiver shall be valid unless in writing and executed by the waiving party.

7.8 Severability. If any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

7.9 Governing Law. This Agreement is executed and delivered in the State of California and shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

7.10 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Owner shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

**(End of page. Next page is signature page.)**

**SIGNATURE PAGE  
EASEMENT PURCHASE AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

**SDCF HOLDINGS CORPORATION**

**CITY OF CHULA VISTA**

BY: \_\_\_\_\_  
NOLAN ALEGRE  
PRESIDENT

BY: \_\_\_\_\_  
MARIA V. KACHADOORIAN  
CITY MANAGER

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Glen R. Googins  
City Attorney

**Exhibit A**

**LEGAL DESCRIPTION**

**Exhibit B**

**PLAT**

**Exhibit C**

**GRANT OF EASEMENT DEED**