

Bell Road & 94th Street RFB
EXHIBIT H

WHEN RECORDED RETURN TO:

ONE STOP SHOP/RECORDS
CITY OF SCOTTSDALE
(Real Estate Asset Manager)
7447 East Indian School Road, Suite 205
Scottsdale, AZ 85251

PURCHASE AND SALE AGREEMENT
(WITH ESCROW INSTRUCTIONS)

C.O.S. Contract No.- 20 ----- COS
(_____)
(Resolution No. _____)

Fill in individual,
LLC or company
name

THIS PURCHASE AND SALE AGREEMENT (WITH ESCROW INSTRUCTIONS) (the "Agreement") is made and entered into this ____ day of _____, 202__, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), as seller, and _____, an Arizona _____ ("Buyer").

LLC/Partnership/
Corporation/
Individual

RECITALS

A. City is the owner of a parcel of real property (the "Property") comprising approximately 37.44 gross acres located at the northeast corner of 94th St. and Bell Road (Parcel No. APN 215-08-023C), more particularly described on **Exhibit "A"** and depicted on **Exhibit "B"**.

XYZ LLC or John
Doe (who will take
title)

B. Buyer is _____,
an Arizona _____.

C. As of the date of this Agreement, the Property is undeveloped vacant land.

D. The City desires to convey the Property to Buyer for the amount of _____ and No/100 Dollars (\$_,000.00).

E. City has authority under City Charter Article VIII, Section 7 and Scottsdale Revised Code, Division 5, Section 2-221(a) to enter into this Agreement with Buyer, since Buyer was the successful bidder pursuant to a Request for Bids, dated November ____, 2021.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and representations contained herein, Buyer and City agree as follows:

I. TERM OF AGREEMENT

1. Terms and Conditions. The term of this Agreement shall be as follows:

1.1 Commencement. The term of this Agreement shall commence on the date of this Agreement which date shall be the date this Agreement is approved by Scottsdale city council.

1.2 Normal Expiration. This Agreement shall continue in effect until all obligations and rights of the parties under this Agreement have been performed, terminated or have expired.

1.3 Minor Date Adjustments. Closing dates and other dates stated in this Agreement may be extended only by mutual written formal consent of City and Buyer given or withheld in their sole and absolute discretion. City's city Manager's authority to consent for City to any such extension is limited to one extension not exceeding 14 (14) days in the city Manager's sole and absolute discretion.

II. PURCHASE AND SALE OF PROPERTY

2. Purchase Terms.

2.1 Purchase Price. City agrees to sell to Buyer, and Buyer agrees to buy from City, approximately 37.44 gross acres of real property located in Maricopa County, Arizona, for the purchase price shall be _____ DOLLARS (_____ \$,000.00).

2.2 Terms. Such Purchase Price shall be payable as follows: (a) an initial deposit of Twenty Five Thousand and No/100 dollars (\$25,000) given to city as a security deposit at the time of the Property auction. City will deposit this money with the Escrow Agent, as Buyer's earnest money (the "Earnest Money"), within three business days following the opening of escrow, and (b) the balance of the Purchase Price payable in cash or certified funds (in United States Dollars) to be deposited with Escrow Agent on the Closing Date (as defined in subsection 4.1 below). The Earnest Money shall be nonrefundable to Buyer. The Earnest Money shall be applied (and Buyer shall receive a credit in the amount of the Earnest Money) toward the payment of the Purchase Price at closing.

2.3 Buyer and City hereby instruct Escrow Agent to deposit the Earnest Money in an interest-bearing account with a federally insured financial institution, subject to withdrawal 30 days after the Date of this Agreement, at the highest interest rate then obtainable. City and Buyer shall provide their tax identification numbers to Escrow agent in conjunction with the opening of such account. All interest earned thereon during Escrow shall be paid to the Party entitled to receive the Earnest Money upon termination of the Agreement, and if Escrow closes, shall be applied to the Purchase Price.

III. CLOSING PROCEDURES

3. Closing Procedures. The following procedures shall govern the Closing:

3.1 Title Insurer. Except as otherwise expressly provided, or with the consent of the party receiving the title insurance, all title insurance policies and reports shall be obtained from

Commonwealth Land Title Insurance Company NCS (the "Title Insurer") located at 2390 E. Camelback Road, Suite 230, Phoenix AZ 85216. The party receiving title insurance shall have power to select a different title insurer reasonably acceptable to the person providing the title insurance if Title Insurer is unable or unwilling to provide any title insurance requested under this Agreement.

3.2 Title Insurance. Except where this Agreement expressly requires title insurance:

3.2.1 No party is required to obtain or provide title insurance. If requested by Buyer, City will provide and pay for a Seller's standard title policy.

3.2.2 Title Insurer's willingness to issue any title insurance is not required by this Agreement and is not a condition to any party's obligations under this Agreement.

3.2.3 Any party desiring to obtain title insurance not required by this Agreement shall pay all premiums, survey costs, endorsement fees and other charges of any kind or nature associated with such policy or policies.

3.3 Escrow Agent. Commonwealth Land Title Insurance Company NCS, 2390 E. Camelback Road Suite 230, Phoenix, Arizona 85216, Attn: Irma Hickman ("Escrow Agent") shall administer transactions requiring escrow services under this Agreement. This Agreement shall constitute instructions to Escrow Agent for the transactions contemplated by this Agreement. By executing this Agreement or accepting any escrow hereunder, Escrow Agent agrees to perform the obligations imposed by this Agreement. Escrow Agent's liability under this Agreement is limited to performance of the duties and obligations imposed upon Escrow Agent. Escrow Agent shall in all cases be responsible for any liability or claim arising from its negligence, misconduct or other improper or unlawful act. If Escrow Agent is not the title insurance underwriter, then Escrow Agent and Buyer shall cause Title Insurer to provide to the parties to the Closing an insured closing letter in form acceptable to City issued by Title Insurer's title insurance underwriter making Title Insurer's underwriter financially responsible for covering Escrow Agent's proper performance of its duties related to this Agreement. Not less than two (2) weeks prior to closing, Title Insurer shall provide to Buyer and to City's city attorney's office copies of the proposed closing letters.

3.4 Buyer's Deadline to Open Escrow. Within ten (10) days after the date of this Agreement, Buyer shall cause Escrow Agent to establish an escrow on the terms set out in this Agreement and shall give City notice that the escrow is open. Such notice shall be accompanied by a complete copy of this entire agreement (including exhibits) with an original signature by Escrow Agent.

3.5 Closing Location. Not less than three (3) business days prior to Closing, City shall designate a location for the Closing within Maricopa County, Arizona. Unless City designates a different location, the Closing shall occur in Escrow Agent's office.

3.6 Closing Conditions. Closing shall occur only upon the performance of all acts and delivery of all documents required to be performed or delivered at or prior to the Closing, or upon formal notice of waiver of any such conditions or performances by the party for whose benefit such conditions or performances exist. A party is not obligated to close if an event has occurred or circumstance exists that is (or with the passage of time or giving of notice, or both, would be) an

event of default by the other party under this Agreement.

3.7 Escrow Fees and Closing Costs. Except as expressly provided otherwise by this Agreement, Seller and Buyer shall equally share all escrow and termination fees, recording fees, and similar costs.

3.8 Commissions and Fees. City shall not be liable for any real estate commissions or brokerage or similar fees that may arise in connection with this Agreement or the transactions contemplated herein. To the extent any real estate commissions or brokerage or similar fees may at any time be payable in connection with this Agreement, such shall be Buyer's sole obligations. Buyer shall pay, indemnify, defend and hold City harmless therefrom. This paragraph does not preclude Buyer from paying any commission or fees that Buyer has agreed to through the Escrow. Buyer and Broker shall present to city and escrow company the documentation (this document was filed with the response to the city's RFB, the Auction Affidavit, and is **Exhibit "C"** to this agreement), required by the escrow company, regarding the brokerage agreement prior to close of escrow.

3.9 Form of Funds. Except as otherwise specified, all funds required by this Agreement shall be paid in cash, or by certified check or wire transfer.

3.10 Deliveries. Recording or other official filing of a document as directed by this Agreement shall constitute delivery of the document to the grantee thereunder and acceptance by the grantee.

3.11 Return of Recorded and Filed Documents. Recorded documents shall be returned to the person designated by the forms attached to this Agreement (the "Return Person"). If no designation is made for any document, Escrow Agent shall mark the form prior to recording to indicate that City's city attorney is the Return Person. Escrow Agent and the parties shall not change the name or address of the Return Person on any document and shall immediately deliver to the Return Person any recorded document that may come into their possession. The same requirements apply to all other documents.

3.12 Possession. City shall deliver exclusive possession and control of the Property at the Closing.

3.13 Inspection. Prior to Closing, the City hereby grants to the Buyer a revocable license to enter upon the Property upon reasonable request for purposes of inspecting and examining the property. The Buyer shall indemnify and hold the City harmless from and against any and all damages, claims, liabilities, liens, and expenses, including attorneys' fees, arising out of the exercise of the foregoing license.

Risk of Loss. All risk of loss or damage to the Property, other than loss or damage caused by Buyer, shall remain with the City until Closing. Should any part of the property be damaged prior to Closing to a degree that restoration would cost more than Fifty Thousand Dollars (\$50,000.00), then this Agreement may be terminated by either Party giving notice thereof within 3 days of such Party's knowledge of the damage. If neither party elects to so terminate, this Agreement shall remain in full force and effect, and the owner of the damaged property shall pay or credit to the other party at the Closing all monies received by, or claims, causes of action and insurance proceeds held by or in favor of the owner of the damaged property by reason of such damage. If either party elects to

terminate, then the parties shall thereafter have no further duty or obligation hereunder.

3.14 New Encumbrances. Prior to closing, neither party shall enter into or grant any lien, contract, lease, sublease or similar agreement affecting the Property.

IV. CLOSING

4. Closing. The Closing shall be accomplished as follows:

4.1 Closing Date. The date for the closing is no more than Sixty (60) days after City of Scottsdale Council approval of this Agreement, expected to be on or about June 8, 2022.

4.2 Closing Documents. On or prior to the Closing Date, City and Buyer shall sign, acknowledge, and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the "Closing Documents"):

4.2.1 Closing Deposits by City. City shall deposit:

4.2.1.1 This Agreement.

4.2.1.2 Instruments adequate to cause Title Insurer to issue all Title Insurance that this Agreement requires or allows to be issued to Buyer for the Property in connection with the Closing and to satisfy all requirements related to such Title Insurance.

4.2.1.3 A Special Warranty Deed (the "Deed") executed and acknowledged by City in the form attached hereto as **Exhibit "D"** covering the Property.

4.2.1.4 Non-foreign person affidavits and similar legally required documents necessary for the Closing.

4.2.2 Closing Deposits by Buyer. Buyer shall deposit:

4.2.2.1 This Agreement.

4.2.2.2 Funds in the amount of _____ and No/100 Dollars (\$_____,000.00) (the "Purchase Price").

4.2.2.3 Buyer's share of the Closing Expenses, including any Buyer's or Lender's title insurance premiums, one-half escrow fee charges and recording fees.

4.2.2.4 Any brokerage fee due pursuant to **Exhibit "C"** (RFB Auction Affidavit filed by successful bidder).

4.3 Deliveries at Closing. The following shall occur at the Closing in the order listed:

4.3.1 Escrow Agent shall record in the office of the Maricopa County Recorder the following Closing Documents in the order listed:

4.3.1.1 The Deed.

4.3.2 Escrow Agent shall deliver to City the Purchase Price of \$_____,000.00 in a wire transfer to the attention of Anna Henthorne, Accounting Director, City's Treasurers Office, 7447 E. Indian School Rd., Suite 210, Scottsdale, Arizona, less one-half of escrow fees, the premium for the Seller's standard title policy, and incidental amounts not to exceed \$200.00 total that may be required for miscellaneous fees..

4.3.3 Escrow Agent shall deliver to Title Insurer all title insurance premiums for title insurance policies required by either party for the Closing.

4.3.4 Escrow Agent shall retain for itself Escrow Agent's escrow fee for the Closing.

4.3.5 Escrow Agent shall record, file and deliver all other Closing Documents required to complete the Closing as contemplated by this Agreement.

V. TRANSACTION INFORMATION

5. Transaction Information. The parties shall provide to each other the following information and assurances concerning their respective parcels and this Agreement, all of which shall survive this Agreement and all conveyances pursuant to this Agreement:

5.1 City's Warranties and Representations. City warrants and represents to Buyer as follows (the "City Warranties"):

5.1.1 Authority. City has full municipal power and authority to enter into, execute, deliver and consummate this Agreement.

5.1.2 Conflicts. City's execution, delivery and performance of this Agreement is not prohibited by and does not conflict with any other agreements, instruments, or judgments to which City is a party or is otherwise subject, the violation of which will have a material adverse effect on City's ability to perform its obligations under this Agreement.

5.1.3 Brokers. City has not dealt with any real estate brokers in connection with this transaction.

5.2 Buyer's Warranties and Representations. Buyer warrants and represents to City as follows (the "Buyer Warranties"):

5.2.1 Organization. Buyer is duly organized and validly existing under the laws of the State of Arizona. Buyer has all requisite power and authority to enter into and perform this Agreement.

5.2.2 Authority. The person executing this document on behalf of Buyer warrants his or her authority to do so and that all persons necessary to bind Buyer have joined in this document.

5.2.3 Other Agreements. Buyer 's execution, delivery and performance of this Agreement, and any related document have been duly authorized by all necessary boards, managers, members, officers and directors (and by all actions required of its officers and directors) and will not violate its articles of incorporation or organization or bylaws (or similar applicable documents) or result in the breach of or constitute a default under any loan or credit agreement or any other agreement or instrument to which Buyer or any constituent joint ventures, partner, member, shareholder, officer or director of Buyer is a party or by any of them or their assets may be bound or affected.

5.2.4 No Violation of Laws. Buyer is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority.

5.2.5 Attachment and Bankruptcy. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated, filed, pending against, affecting or involving Buyer or its members.

5.3 Buyer's Due Diligence. All title and property conveyed by City to Buyer shall be conveyed in an "as is" condition, with no warranty, express or implied. Without limitation, City makes no warranties as to the condition of title, the condition of improvements, the condition of the soil, or geology, or the presence of known or unknown contaminants or other faults or defects of any description. Buyer has inspected the Property and its environs and obtained such information and professional advice as Buyer has determined to be necessary related to them, this Agreement and the transactions contemplated herein. It shall be the sole responsibility of Buyer at its expense to investigate and determine the suitability of the soil, environmental and other conditions for the condition of the Property. If such conditions are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of Buyer to take such action as may be necessary to place the soil, environmental and other conditions of the Property in a condition entirely suitable for its development and use.

5.4 Survival of Representations and Warranties. Each warranty and representation (i) must be true and accurate in all material respects as of the date of this Agreement, (ii) constitutes a material part of the consideration for this Agreement, and (iii) shall survive Closing.

5.5 Right of Assignment. Neither City nor Buyer shall assign this Agreement, the proceeds of this Agreement, or any other rights under this Agreement without the consent of City acting through its City Manager. Any assignment in contravention of this provision shall be void.

VI. MISCELLANEOUS

6. The following miscellaneous provisions shall apply:

6.1 Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given and effective when delivered personally by telegraph, telex or

telecopy, or on the second mail delivery day after such notice is deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, or when delivered by Express Mail, Federal Express or a like service, addressed to the party as follows:

As to Buyer:

Buyer name and
mailing address

As to City:

Real Estate Asset Manager
City of Scottsdale
7447 E Indian School Road, Suite 205
Scottsdale, AZ 85251

Copy to:

City Attorney's Office
City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

or at such address as either party hereto may designate by giving written notice thereof to the other party hereto in the aforesaid manner.

6.2 Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the parties hereto with regard to the subject matters hereof and supersedes all other previous oral or written agreements or understandings with respect thereto. Neither this Agreement nor the provisions hereof may be waived, modified, amended, discharged or terminated except by instrument in writing signed by the party against which enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent as set forth in such instrument.

6.3 Captions. The captions used in connection with the sections of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.

6.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

6.5 Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatever upon any person other than parties hereto and their respective successors, assigns, and transferees permitted hereby.

6.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.

6.7 Exhibits. The exhibits attached hereto which are described herein are hereby incorporated by reference and made a part of this Agreement.

6.8 Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original thereof.

6.9 Attorneys' Fees. If either party shall bring suit to enforce the terms and provisions hereof or to recover damages for breach the prevailing party shall be entitled to recover from the other party all costs and expenses incurred in connection with the exercise by the prevailing party of its rights and remedies hereunder and reasonable attorneys' fees. The amount of the attorneys' fees is to be fixed by the court without a jury. For the purposes of this paragraph the term "prevailing party" shall mean in the case of the claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

6.10 Time of Essence. Time is of the essence of this Agreement. Each party shall strictly comply with the requirement to perform its obligations and Close this transaction on the precise date set forth herein. This Agreement provides no grace or cure periods.

6.11 Miscellaneous. This Agreement shall be interpreted according to its plain meaning and not strictly for or against either party.

6.12 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S. §38-511.

EXECUTED as of the date first given above.

[Signature pages to follow]

Printed name/
individual/LLC, or
company

BUYER: _____, an Arizona

By: _____

Signature; if a company
then print title below. John
Doe, Managing Partner

STATE OF ARIZONA)
) ss
County of Maricopa)

Acknowledged before me this _____ day of _____, 20____, by _____
of _____, an Arizona _____

Notary Public

My Commission Expires:

CITY: **CITY OF SCOTTSDALE**, an Arizona
 municipal corporation

By: _____
David D. Ortega, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Sherry R. Scott, City Attorney
By: Eric Anderson, Senior Assistant City Attorney

Dan Worth, Director Public Works

ESCROW ACCEPTED AND AGREED TO BY:

Escrow Agent: COMMONWEALTH LAND TITLE INSURANCE COMPANY NCS

By _____
Irma Hickman, Its ESCROW AGENT

TABLE OF EXHIBITS TO PURCHASE AND SALE AGREEMENT

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	A	Legal descriptions for the Property
B	A	Depiction of the Property
C	3.8	Auction Affidavit
D	4.2.1.2	Special Warranty Deed

DRAFT