

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

APRIL 17, 2018

TITLE:

PURCHASE AGREEMENTS FOR REAL PROPERTY ACQUISITION FOR WARNER AVENUE IMPROVEMENTS PHASE 1 (PROJECT NO. 14-6802) (NON-GENERAL FUND) {STRATEGIC PLAN NOS. 6, 1G; 3, 2C}

A handwritten signature in black ink, appearing to read "C. Adams", written over a horizontal line.

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute a Purchase Agreement for the real property acquisition and goodwill (if any) with the property owners listed below, subject to nonsubstantive changes approved by the City Manager and City Attorney:

No.	Property Owner	Property commonly known as / location	Acquisition Type	Amount
1.	Susan A. Hawken/ Lee Hawken Partnership	2246-2248 S. Cypress Ave. (APN 403-141-09)	Full	\$1,650,000

DISCUSSION

Warner Avenue is classified as an East-West Major Arterial in the City's General Plan Circulation Element (GPCE) and the County of Orange Master Plan of Arterial Highways (MPAH). Improving the 1-mile Warner Avenue segment from Main Street to Wright Street has been a long-term priority project that is being constructed in several phases. Improvements include widening from a four-lane roadway to a six-lane arterial to address safety issues and provide adequate vehicular capacity; and installing parkway, raised median landscape, storm drain, protected bike lanes, sound walls, street lights, and traffic signals. The City is acquiring properties for the development of Phase 1, bounded by Main Street and Oak Street, and construction is anticipated to begin in spring 2019.

The property acquisition is necessary to accommodate the street improvements for Phase 1 (Exhibit 1). The purchase offer was determined based on appraised values prepared by a California state-licensed appraiser, and accepted by the property owners. The compensation amount listed above is incorporated in the attached agreement (Exhibit 2).

STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City's efforts to meet Goal #6 – Community Facilities & Infrastructure, Objective #1 (establish and maintain a Community Investment Plan for all City assets), Strategy G (develop and implement the City's Capital Improvement Program in coordination with the Community Investment and Deferred Maintenance Plans).

Approval of this item also supports the City's efforts to meet Goal #3 – Economic Development, Objective #2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies), Strategy C (support business development and job growth along transit corridors through the completion of critical transit plans/projects).

ENVIRONMENTAL IMPACT

On September 1, 2015, City Council approved the Warner Avenue Final Environmental Impact Statement (SCH No. 2012101004).

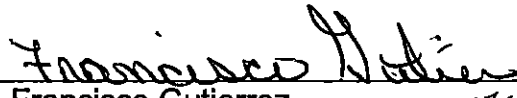
FISCAL IMPACT

Funds in the amount of \$1,650,000 are available in the Warner Avenue Improvements Project (No. 14-6802) for expenditure in FY 2017-2018: \$1,237,500 in the Measure M2 Construction Street Fund (Account No. 03217663-66100), and \$412,500 in the Transportation System Improvement Area E Fund (Account No. 03417660-66100), subject to nonsubstantive changes.

APPROVED AS TO FUNDS & ACCOUNTS:



Edwin "William" Galvez, P.E.
Acting Executive Director
Public Works Agency



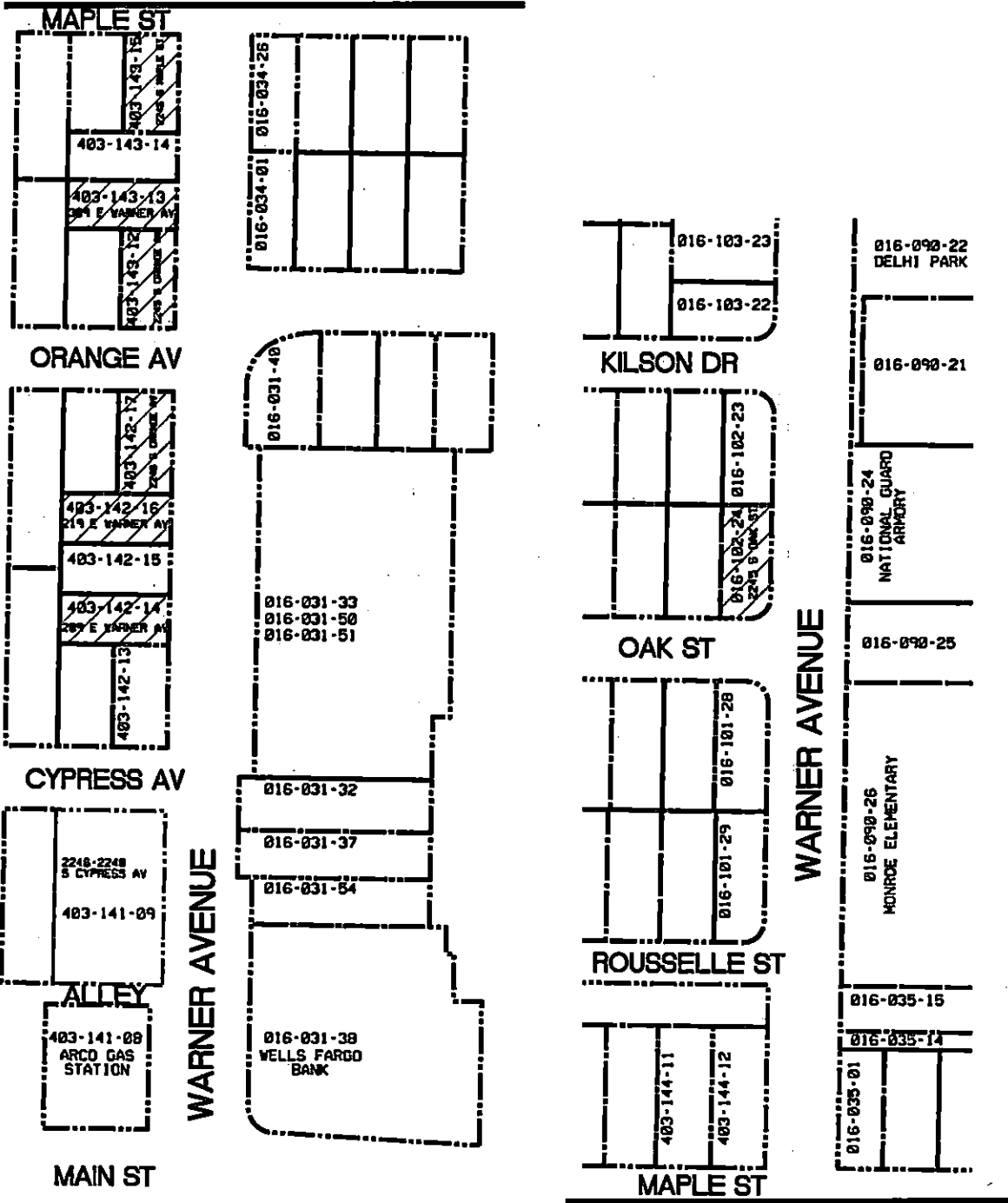
Francisco Gutierrez
Executive Director
Finance & Management Services Agency

JY #257 Fund #32834

FM/EWG/JG/KN

- Exhibits: 1. Location Map
 2. Purchase Agreement – APN 403-141-09

**MATCHLINE
SEE BOTTOM RIGHT**



**MATCHLINE
SEE TOP LEFT**

LEGEND:



-  -SUBJECT PROPERTY
-  -ACQUIRED PROPERTIES

EXHIBIT 1

SANTA ANA



PUBLIC WORKS AGENCY

TITLE:

**PURCHASE AGREEMENTS FOR WARNER AVENUE
IMPROVEMENTS (PROJECT NO. 146802
NONGENERAL FUND)
(Strategic Plan No. 6, 1, G and 3, 2, C)**



**PURCHASE AND SALE AGREEMENT FOR ACQUISITION OF REAL PROPERTY
AND BILATERAL ESCROW INSTRUCTIONS**

THIS AGREEMENT (hereinafter "PSA"), entered into on _____, 2018, between the CITY OF SANTA ANA, a charter city and municipal corporation duly organized under the Constitution and laws of the State of California (hereinafter "City" or "Buyer"), and, Susan A. Hawken, a single woman, as to 50% interest; and Lee/Hawken Partnership, as to 50% interest (hereinafter "Seller"), regardless of number or gender;

THEREFORE, for and in consideration of their mutual promises, covenants and agreements, and subject to the terms, conditions and provisions of this PSA, Seller agrees to sell to City, and City agrees to purchase from Seller, that certain real property (hereinafter "Said Real Property") legally described as follows:

SEE EXHIBIT "A" – Legal Description
ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF
(Commonly known as 2246-2248 South Cypress Avenue, Santa Ana CA)
(APN 403-141-09)

Said purchase and sale of Said Real Property shall be in accordance with and subject to all of the following terms, conditions, promises, covenants, agreements and provisions, to wit:

- 1. Conveyance by Seller.** Seller agrees to convey said real property to City, by Grant Deed, at the office of Commonwealth Title Company at 4100 Newport Place Drive, Suite 120, Newport Beach, California within sixty (60) days from and after the date on which the City has approved this Agreement.
- 2. Title to be Conveyed.** Seller agrees that, except as may hereinafter be otherwise expressly provided, said real property shall be conveyed by Seller to City, as aforesaid, free and clear of any and all conditions, restrictions, reservations, exceptions, easements, assessments, profits, limitations, encumbrances (whether monetary or non-monetary, general or specific, including any and all leasehold interests), liens, clouds or defects in title except those exceptions shown in Paragraph 15 below. Seller hereby warrants that the title to said real property to be conveyed by Seller to City shall be free and clear as provided above. Seller further agrees that acceptance by City of any deed to said real property, with or without knowledge of any condition, restriction, reservation, exception, easement, assessment, profit, limitation, encumbrance (whether monetary or non-monetary, general or specific, and including any and all leasehold interests), lien, cloud or defect in title, shall not constitute a waiver by City of its right to the full and clear title hereinabove agreed to be conveyed by Seller to City, nor of any right which might accrue to City because of the failure of Seller to convey title as hereinabove provided.
- 3. Title Insurance.** Seller agrees to deliver to City, concurrently with the conveyance of said real property to City, within the time and at the place hereinabove specified for said conveyance of said real property, a policy of title insurance to be issued by the above mentioned title company, with the City therein named as the insured, in the amount of One Million Six Hundred Fifty Thousand and no/100 Dollars (\$1,650,000.00). insuring the title of the City to said real property is free and clear of any and all conditions, restrictions, reservations, exceptions, easements, assessments, profits, limitations, encumbrances (whether monetary or non-monetary, general or specific, and including any and all leasehold interests), liens, clouds or defects in title, excepting such specific ones as city may hereinafter expressly agree to take subject to. Acceptance by City of any such policy of insurance, whether such insurance complies with the requirements of this paragraph or not, shall not constitute a waiver by City of its right to such insurance as is herein required of Seller, nor a waiver by the City of any rights of action for damages or any other rights which may accrue to City by reason of the failure of Seller to convey title or to provide title insurance as required in this Agreement.

4. **Escrow.** City agrees to open an escrow at the office of Commonwealth Title Company, 4100 Newport Place Drive, Newport Beach, California, (the Escrow Agent) within five (5) days from and after the date on which the City has approved this Agreement. This Agreement constitutes the joint escrow instructions of the City and the Seller and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow. Escrow to close within sixty (60) days of the City's execution of this Agreement. If escrow is not in a condition to close by the Close of Escrow, and failure to close is due to unforeseen conditions of title or interest of third parties in the Property that cannot be resolved in Escrow, then buyer may, at its option, request cancellation of escrow and this Agreement and return of any funds it has deposited into escrow. Thereupon, all obligations and liabilities of the Parties under this Agreement shall cease and terminate. If no such request is made, Escrow shall be closed as soon as possible thereafter. Buyer shall be entitled to possession of the Property immediately upon close of Escrow.

The Escrow Agent hereby is empowered to act under this Agreement, and upon indicating its acceptance of this Section 4 and of the General Provisions described in **Exhibit "B"** attached hereto and incorporated herein by this reference, in writing, delivered to the City and to the Seller within five (5) days after delivery of this Agreement, shall carry out its duties as Escrow Agent hereunder.

City agrees to bear and Escrow Agent is hereby authorized to charge to the City the cost of any transfer taxes, recording fees, cost of title insurance, re-conveyance fees, document preparation fees, escrow fees and any other closing costs incidental to the conveying of said real property to City. Penalties for prepayment of bona fide obligations secured by any existing deed of trust or mortgage shall be waived pursuant to Civil Code Procedures Section 1265.240.

The liability to the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Section 4, Section 6, Section 8 and **Exhibit "B"** of the General Provisions of this Agreement.

5. **Property Taxes.** Such real property taxes, if any, on said real property for the fiscal year within which said real property is conveyed to City as are unpaid at the time of said conveyance shall be cleared and paid in accordance with the provisions of Section 4986 of the Revenue and Taxation Code of the State of California. Seller shall be eligible for a refund under Section 5096.7 of the Revenue and Taxation Code of the State of California for that portion of property taxes on said real property for said fiscal year which have been paid prior to the date the deed conveying said real property to City is recorded which is allocable to that portion of the fiscal year which begins on the date the deed conveying said real property to City is recorded and made uncollectible if unpaid by reason of Section 5086 of the Revenue and Taxation Code of the State of California. To the extent that Seller has prepaid any taxes or assessments attributable to the Property; Seller shall be solely responsible for obtaining any refund due thereon from the taxing authority. Upon written request, Buyer shall assist Seller, at Seller's sole cost, in obtaining said refund, if any; however, in no case shall Buyer credit or otherwise pay Seller for that refund, if any, through or outside of Escrow.

All unpaid taxes on said real property for any and all years prior to the fiscal year within which said conveyance is made shall be paid by Seller before conveyance of said real property to City.

6. **Payment of Purchase Price.** City agrees to pay to Seller, and Seller agrees to accept from City, as and for the full purchase price for said real property, fixtures & equipment (improvements pertaining to the realty), goodwill (if any), and severance damages, the total sum of **One Million Six Hundred Fifty Thousand and no/100 Dollars (\$1,650,000.00)**. City agrees to deposit said purchase price in escrow with the Escrow Agent within THIRTY (30) days from and after the date on which the City has approved this Agreement, and the Escrow Agent is hereby authorized to pay the same to Seller upon and after:

- a. Conveyance of said real property by Seller to City as hereinabove provided;
- b. Acceptance by City of a Grant Deed conveying said real property to City;

- c. Delivery to City of the policy of title insurance as hereinabove provided;
- d. Recordation of the Deed conveying said real property to City.

7. **Possession.** Seller agrees to deliver to City, on the date the Deed conveying said real property to City is recorded, quiet and peaceful possession of said real property, which shall be made free by Seller of all personal property.

- a. No later than fourteen days (14) days after close of escrow, Seller shall have removed all merchandise, inventory, equipment, personal property, and/or removable trade fixtures from the Property. Any merchandise, inventory, equipment, personal property, and/or removable trade fixtures at the Property as of three days after close of escrow shall be deemed abandoned by Seller on that date.
- b. If Seller does not vacate the Property by the above stated date, the Seller agrees to have the Court immediately issue a Writ of Possession and/or Assistance, directing the Marshall or Sheriff of Orange County to take physical possession of the Property in favor of the City. Seller waives the right to have the City file an unlawful detainer action, as well as waive the right to any hearing or any requirements for an application by City to obtain the Writ of Possession and/or Assistance and waives any and all rights to object to the issuance of said Writ if Seller does not vacate the Property by fourteen (14) days after close of escrow.

8. **Rental and Occupancy By Seller.** Seller agrees to execute a complete, current and correct statement of rentals (Seller Estoppel) on a form furnished to Seller by City and deliver same to City within fifteen (15) days hereof with copies of any written leases or rental agreements attached. All rents will be prorated as of the close of escrow on the basis of a 30-day month/360-day year consistent with that statement, subject to approval of City. Seller hereby agrees not to rent any units on the premises which are vacant as of the date that this agreement is executed by seller, or which may be vacated by present occupants prior to close of escrow. In return, the City agrees to reimburse seller lost rentals incurred by keeping units vacant through the close of escrow. Seller agrees that any and all Tenant Security Deposits pertaining to the subject property collected by or in the possession of Seller prior to the close of escrow shall be transferred to and become the property of City during escrow.

Seller hereby warrants that the rental statement referred to shall include the terms of all rental agreements, tenancies, and leases (written, unwritten, recorded, or unrecorded) and Seller agrees to hold City harmless from all liability from any such leases or agreements. Seller also warrants that there are no oral or written leases on all or any portion of the subject property exceeding a period of one month.

9. **Waivers.** The waiver by City of any breach of any covenant or agreement herein contained on the part of the Seller shall not be deemed or held to be a waiver of any subsequent or other breach of said covenant or agreement nor a waiver of any breach of any other covenants or agreements contained herein.

10. **Heirs, Assigns, Successors-in-Interest.** This PSA, and all the terms, covenants and conditions hereof, shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective Parties hereto.

11. **Time is of the Essence.** In all matters and things hereunder to be done and in all payments hereunder to be made, time is and shall be of the essence.

12. **Just Compensation.** Seller acknowledges and agrees that said purchase price is just compensation at fair market value for said real property and includes payment for fixtures & equipment (improvements pertaining to the realty), goodwill (if any), and severance damages.

13. Acknowledgment of Full Benefits and Release.

- A. By execution of this Agreement, Seller, on behalf of himself, his heirs, executors, administrators, successors and assigns, hereby acknowledges that this Agreement provides full payment for the acquisition of the Property by Buyer, and Seller hereby expressly and unconditionally waives any claim for compensation for injury to the remainder ("severance damages"); precondemnation damages; claims for inverse condemnation; loss of goodwill and/or lost profits; loss or impairment of any "bonus value" attributable to any lease; damage to or loss of improvements pertaining to the realty; damage to or loss of machinery, fixtures, inventory, equipment and/or personal property; any right to repurchase, leaseback from Seller, or receive any financial gain from, the sale of any portion of the Property, or challenge Buyer's adoption of a resolution of necessity, pursuant to Code of Civil Procedure sections 1245.245; any right to receive any notices pursuant to Code of Civil Procedure section 1245.245; any right to enforce any other obligation placed upon Seller pursuant to Code of Civil Procedure sections 1245.245, 1263.025 and 1263.615; any other rights conferred upon Sellers pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025; and attorney's fees and costs. It being understood that this is a complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever relating to or in connection with the acquisition of the Property by Buyer. This release shall survive the Close of Escrow.
- B. This Agreement arose out of Buyer's efforts to acquire the Property through its municipal authority. Seller, on behalf of himself, his heirs, executors, administrators, successors and assigns, hereby fully releases Buyer, its successors, agents, representatives (including attorneys), and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage which has been sustained by Seller, or may be sustained by Seller, as a result of Buyer's efforts to acquire the Property or to construct the works of improvement thereon, or any preliminary steps thereto. This Agreement does not, and shall not be construed to, require Seller to indemnify Buyer for damages which may arise as a result of Buyer's efforts to construct improvements on the Property.

This acknowledgment and release shall survive the Close of Escrow.

14. Notices. The mailing address of the City of Santa Ana is 20 Civic Center Plaza, M-36, P.O. Box 1988, in the City of Santa Ana 92701, County of Orange, State of California. The mailing address of the Seller is 517 South Broadway, Santa Ana, CA 92701.

15. Exceptions. City agrees to accept title to said real property subject to the following: NONE.

16. Entire Agreement. It is mutually agreed that the Parties hereto have herein set forth the whole of their Agreement. Performance of this PSA by City shall lay at rest, each, every, and all issue(s) that were raised or could have been raised in connection with the acquisition of Said Real Property by City.

17. Hazardous Waste. Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv)

defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. S1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq. (42 U.S.C. S6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42. U.S.C. S9601 et seq. (42 U.S.C. S9601).

18. Compliance With Environmental Laws. To the best of Seller's knowledge the Property complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

19. Indemnity. Seller agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment). This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be responsible for acts or omissions to act post close of this escrow.

20. Contingency. It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the City herein. The execution of these documents and the delivery of same to Escrow Agent constitute said acceptance and approval.

21. Modification and Amendment. This PSA may not be modified or amended except in writing signed by the Seller and City.

22. Partial Invalidity. Any provision of this PSA that is unenforceable or invalid or the conclusion of which would adversely affect the validity, legality, or enforcement of this PSA shall have no effect, but all the remaining provisions of this PSA shall remain in full force.

23. Captions. Captions and headings in this PSA, including the title of this PSA, are for convenience only and are not to be considered in construing this PSA.

24. Governing Law. This PSA shall be governed by and construed in accordance with the laws of the State of California.

25. **No Reliance By One Party On The Other.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this PSA and the meaning of the provisions hereof. The provisions of this PSA shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question.
26. **No Third Party Beneficiary.** This PSA is intended to benefit only the Parties hereto and no other person or entity has or shall acquire any rights hereunder.
27. **Duty To Cooperate Further.** Each party hereby agrees that it shall, upon request of the other, execute and deliver such further documents (in form and substance reasonably acceptable to the party to be charged) and do such other acts and things as are reasonably necessary and appropriate to effectuate the terms and conditions of this PSA, without cost.
28. **Applicability of Agreement To Assignees.** This PSA shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties to this PSA.
29. **Authority to Execute Agreement.** Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this PSA, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
30. **Incorporation of Exhibits.** All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this PSA.

IN WITNESS WHEREOF, the Parties hereto have executed this PSA on the date and year first written above.

SELLER: Susan A. Hawken, a single woman, as to 50% interest; and Lee/Hawken Partnership, as to 50% interest

Susan A. Hawken
By: Susan A. Hawken

Date: 2-27-18, 2018

Susan A. Hawken
By: managing partner

Date: 2-27-18, 2018

City/Buyer
City of Santa Ana

Raul Godinez II
City Manager

Date: _____, 2018

Attest:

Maria D. Huizar
City Clerk

Date: _____, 2018

Approved as to Form:

John M. Funk
John M. Funk
Assistant City Attorney

Date: 3-6, 2018

RECOMMENDED FOR APPROVAL:

Executive Director
Public Works Agency

Date: _____, 2018

EXHIBIT "A"

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 35, 36, 37, AND 38 IN BLOCK B IN TRACT NO. 638, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 17 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor's Parcel Number: 403-141-09

EXHIBIT "B" (Commonwealth Land Title Company)

GENERAL ESCROW PROVISIONS

All disbursements shall be made by Escrow's check. All funds received in this escrow shall be deposited in one or more of your general escrow accounts with any bank doing business in the State of California and may be transferred to any other general escrow account or accounts. The expression "close of escrow" means the date on which instruments referred to herein are filed for record. All adjustments are to be made on the basis of a 30-day month. Recordation of any instruments delivered through this escrow, if necessary or proper in the issuance of a policy of title insurance called for, is hereby authorized.

There shall be no proration of any existing insurance policies in this escrow.

You are to furnish a copy of these instructions, amendments thereto, closing statements and/or any other documents deposited in this escrow to the lender or lenders, the real estate broker or brokers and/or the attorney or attorneys involved in this transaction upon request of such lenders, brokers or attorneys.

Should you before or after close of escrow receive or become aware of any conflicting demands or claims with respect to this escrow or the rights of any of the parties hereto, or any money or property deposited herein affected hereby, you shall have the right to discontinue any or all further acts on your part until such conflict is resolved to your satisfaction, and you shall have the further right to commence or defend any action or proceedings for the determination of such conflict. The parties hereto jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorney's fees, suffered or incurred by you in connection with, or arising out of this escrow, including, but without limiting the generality of the foregoing, a suit in interpleader brought by you. In the event you file a suit in interpleader, you shall ipso facto be fully released and discharged from all obligations imposed upon you in this escrow.

If for any reason funds are retained or remain in escrow, you are to deduct therefrom a reasonable monthly charge as custodian thereof of not less than \$10.00 per month.

Time is declared to be the essence of these instructions. If you are unable to comply within the time specified herein and such additional time as is required to make an examination of the official records, you will return all documents, money or property to the party entitled thereto upon satisfactory written demand and authorization. Any amendment of and/or supplement to any instructions must be in writing. The seller agrees to sell and the buyer agrees to buy the property herein described upon the terms hereof.

These escrow instructions, and amendments hereto, may be executed in one or more counterparts, each of which independently shall have the same effect as if it were the original, and all of which taken together shall constitute one and the same instruction.

