

CITY OF GARDEN GROVE

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept: City Manager
Subject: ACQUISITION OF REAL
PROPERTY LOCATED AT 13531
FAIRVIEW STREET

From: Keith G. Jones
Dept: Public Works
Date: January 26, 2010

OBJECTIVE

It is requested that the City Council consider the acquisition of real property located at 13531 Fairview Street, owned by Edward and Shirley Gray (Owner), for the widening of Fairview Street.

BACKGROUND

The Fairview-Trask Intersection Improvement Project is designed to widen the westerly side of Fairview Street extending north from Avalon Avenue to Rancho Way. The subject property is part of the Fairview-Trask Intersection Improvement Project. Staff reviewed the requirements of the California Environmental Quality Act (CEQA), noting the potential impact of the proposed right-of-way on the environment was not significant. As a result, a Negative Declaration was adopted by the City Council on October 27, 2009.

DISCUSSION

Due to the proximity of the existing single-family residence to the proposed street improvements, the acquisition of the entire parcel is required. A site map of the subject property is enclosed as Attachment 1.

An agreement has been reached with Owner to acquire fee simple title to 13531 Fairview Street. The agreed upon purchase price of \$534,600 has been determined to be at fair market value by an independent appraiser. The property contains 19,800 square feet of land and is improved with an 800 square foot single-family residence.

The property is being sold in "as is" condition at the close of escrow. However, environmental testing of the subject property will be conducted prior to the close of escrow to disclose the presence of hazardous materials. The City retains the option of terminating the agreement if hazardous materials are identified.

A tenant occupies the subject property; subject to a month-to-month lease, which can be terminated with 30-day written notice. The Tenant is eligible for relocation assistance.

FINANCIAL IMPACT

The street improvement project is funded by Measure M local funds, which have been set aside for the acquisition of the subject property.

RECOMMENDATION

Based on the foregoing information staff recommends that City Council:

- Approve the acquisition of the subject property;
- Authorize the City Manager to execute the Purchase Agreement and make minor modifications as needed on behalf of the City (Attachment 2);
- Authorize the City Clerk to accept the Grant Deed on behalf of the City;
- Authorize the Finance Director to draw a warrant in the amount of Five Hundred Thirty Four Thousand-Six hundred Dollars (\$534,600) for the property acquisition;
- Authorize the City Manager to execute agreements for asbestos testing, asbestos abatement, other environmental testing as needed, and demolition at the lowest responsible bids.
- Authorize staff to provide relocation assistance to the tenant in possession per California Relocation Law when appropriate to do so.


KEITH G. JONES
Public Works Director

By: Carlos Marquez
Real Property Agent

Recommended for Approval


Matthew Fertal
City Manager

Attachment 1 - Site Map
Attachment 2 - Purchase Agreement

PARCEL NO: 101-652-04
 TITLE REPORT NO.: 11387880-03
 PROJECT: Trask Avenue/ Fairview Street Intersection
 PROJECT NO: 7247

**AGREEMENT FOR ACQUISITION OF REAL PROPERTY
 AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALES AGREEMENT (this “**Agreement**”) is entered into this _____ day of, _____ 2010, by and between the CITY OF GARDEN GROVE, a municipal corporation (“City”), and the undersigned owners, Edward H. Gray and Shirley L. Gray, Co-Trustees of the Gray Family Trust under Agreement dated January 5, 1975 for the benefit of Edward Gray and Shirley Gray, (“Sellers”), for acquisition by City of certain real property described below.

WHEREAS, Seller is the owner of that certain real property in the City of Garden Grove, Orange County, California, known as **APN: 101-652-04**, located at 13531 Fairview Street in the City of Garden Grove, and more particularly described in Exhibit A attached hereto and incorporated herein by the reference (the **Property**);

NOW, THEREFORE, for good and valuable consideration, the recipient and sufficiency of which are hereby acknowledged, the Parties agreed as follows.

1. **Agreement to Sell and Purchase.** Seller agrees to sell to City, and City agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain real property (“Property”) situated in the City of Garden Grove, County of Orange, State of California, and legally described in Exhibit "A" attached hereto and incorporated herein by reference.
2. **Purchase Price.** The total purchase price, payable in cash through escrow, shall be the sum of **five hundred thirty four thousand, six hundred dollars (\$534,600)** (the “Purchase Price”).
 - 2.1 **Right of Possession.** Seller and City agree and confirm that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by City, including the right to remove and dispose of improvements shall commence upon the close of escrow controlling this transaction.
3. **Title and Title Insurance.**
 - 3.1 Within ten (10) days after the Effective Date, Seller shall deliver to Buyer a preliminary title report for the Property from the Title Company together with copies of all instruments noted as exceptions therein and plotted on plot map (the “Preliminary Title Report”).
 - 3.2 Buyer shall have until the date that is ten (10) days prior to the Outside Closing Date to disapprove any exceptions to title shown on the Preliminary Title Report or reflected on the Survey (collectively, “Disapproved Exceptions”) and to provide Seller with notice of disapproval in writing describing the defect with reasonable particularity (the “Disapproval Notice”). The period from the Effective Date to the date that is ten (10) days prior to the Outside Closing Date is hereinafter referred to as the “Due Diligence Period.” Any exceptions to title not approved or disapproved by Buyer within the Due Diligence Period shall be deemed approved. Within five (5) days after Seller’s receipt of a Disapproval

Notice, Seller shall notify Buyer in writing whether Seller intends to remove the Disapproved Exceptions. If Seller notifies Buyer of an intention to eliminate the Disapproved Exceptions, Seller shall do so prior to the Close of Escrow. If Seller indicates to Buyer in writing within the time allowed that Seller does not intend to remove any of the Disapproved Exceptions (or if an exception is deemed disapproved), then Buyer, by notifying Seller in writing within five (5) days of Seller's notice to Buyer, may elect to terminate this Agreement or to take the Property subject to the Disapproved Exceptions. In any event, Seller shall pay in full all loans secured by mortgages and deeds of trust, any mechanics liens, and any other monetary liens or exceptions (other than current real property taxes which are not due and payable) prior to or concurrently with the Close of Escrow, and the Escrow Holder is hereby directed to cause same to be paid off from the proceeds of the Purchase Price. The policy of title insurance shall include such endorsements as Buyer shall request, but any title policy endorsements shall be paid for by Buyer. Whether or not Buyer shall have furnished to Seller any notice of Disapproved Exceptions pursuant to the foregoing provisions of this Agreement, Buyer may, at or prior to the Close of Escrow, notify Seller in writing of objections to any title exceptions (including any matters reflected on the Survey) raised by the Title Company or the surveyor after the Due Diligence Period or Buyer's response to title matters, whichever is earlier. Buyer shall have the right to accept title subject to such matters or to terminate this Agreement.

3.3 Buyer's fee title to the Property shall be insured at the Close of Escrow by a CLTA (or if elected by Buyer, ALTA) Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price, issued by Title Company together with all endorsements requested by Buyer (collectively, the "Title Policy"). City agrees to pay the premium charged. The Title Policy shall insure Buyer's fee interest in the Property free and clear of all liens, encumbrances, restrictions, and rights-of-way of record, subject only to the following (the "Permitted Title Exceptions"):

- (i) Real property taxes for the then current tax fiscal year which are a lien not yet due and payable;
- (ii) Those title exceptions approved by Buyer or deemed approved by Buyer pursuant to Section 3.2.

3.4 Except for the existing lease, Seller shall not improve, alter, encumber, lease or agree to sell the Property or any portion thereof or interest therein to any other party during the period from the Effective Date to the Close of Escrow or the date of the termination of this Agreement, as applicable.

3.5 Conveyance of Title. At the close of escrow, Seller shall convey by Grant Deed to Buyer marketable fee simple title to the property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, lease and taxes except those title exceptions approved by City pursuant to Section 3.2.

4. Escrow. City agrees to open an escrow in accordance with this Agreement with West Coast Escrow. This Agreement constitutes the joint escrow instructions of City and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

5. **Tax Adjustment Procedure.**

ESCROW AGENT IS AUTHORIZED AND IS INSTRUCTED TO COMPLY WITH THE FOLLOWING TAX ADJUSTMENT PROCEDURE:

- 5.1 **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.
- 5.2 **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's prorata portion of taxes, if any, due at close of escrow, shall be cleared and paid by Seller, outside escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.
- 5.3 **Refund of Taxes.** Seller shall have the sole right, after close of escrow, to apply to the Orange County Tax Collector for refund of any excess property taxes which have been paid by Seller with respect to the Property. This refund would apply to the period after City's acquisition, pursuant to Revenue and Taxation Code Section 5096.7.

6. **Escrow Agent Authorization.**

ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

- 6.1 **Seller.** Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement.
- 6.2 **City.** Pay and charge City for cost of any transfer taxes, recording fees, title insurance premium fees, reconveyance fees, escrow fees, and any other closing costs incidental charges, and costs payable under Paragraph 5 of this Agreement.
- 6.3 **Disbursement.** Disburse funds and deliver the Grant Deed when conditions of this escrow have been fulfilled by City and Seller.
- 6.4 **Close of Escrow.** The term "close of escrow," if and where written in these instructions, shall mean the date, the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Orange County Recorder. Recordation of instruments delivered through this escrow is authorized, if necessary or proper in the issuance of the policy of title insurance.
- 6.5 **Time Limits.** All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.
- 6.6 **Time of the Essence.** **TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS.** The close of escrow shall occur on or before the date that is 45 days after the date this Agreement is fully executed. If escrow is not in a position to close within said 45-day period, either party not in default hereof may cancel this Agreement.

- 6.7 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 20 and to its liability under any policy of title insurance issued in regard to this escrow.
- 6.8 Escrow Fees, Charges and Costs. City agrees to pay all City's and Seller's usual fees, charges, and costs incidental to the conveyance of the Property which arise in this escrow and as set forth in Paragraph 7.2 of this Agreement.

7. **Conditions Precedent to Close of Escrow.**

City's Conditions Prior to Closing. The obligation of the City to complete the purchase of the Property is subject to the satisfaction of the following conditions:

- 7.1 Seller shall deliver through escrow an executed and recordable Grant Deed sufficient to convey good and marketable fee simple title to the Property to the City.
- 7.2 Seller shall deliver through escrow a Non-Foreign Transferor Declaration duly executed and in the form of Exhibit "B" attached hereto and made a part hereof.
- 7.3 Seller shall deliver through escrow such funds and documents as are necessary to comply with Seller's obligations under this Agreement.
- 7.4 Seller is not in default of any of its obligations under the terms of this Agreement, and all representations of Seller herein are true and correct.
- 7.5 Escrow Agent has committed to deliver to City a title insurance policy as required by Paragraph 4 hereof.
- 7.6 The City shall not have terminated this Agreement.
- 7.7 The Property is in the condition required by this Agreement.

Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:

- 7.8 The City is not in default of any of its obligations under the terms of this Agreement, and all representations of City herein are true and correct.
- 7.9 The City shall have deposited with the Escrow Agent immediately available funds in an amount equal to the Purchase Price and the City's share of costs described herein.
- 7.10 The Seller shall not have terminated this Agreement.

8. **Right of Entry.** Seller hereby grants to City, its authorized agents, permission to enter upon the Property at all reasonable times upon not less than two (2) days advance notice prior to close of escrow for the purpose of making necessary or appropriate inspections.

- 8.1 **Testing.** Within forty-five (45) days of City's execution of this Agreement, City at its expense may (but is not required to) perform such soil tests as City shall deem appropriate (the "Tests"). As soon as practicable after the completion of the Tests, City shall provide Seller with a written report (the "Report") describing (i) the results of any such Tests and (ii) any repairs or remedial measures proposed to be undertaken to comply with all federal, state and local legal requirements applicable to the conditions disclosed by such Tests, including, but not limited to, any legal requirements relating to hazardous or toxic materials. If remedial measures are deemed necessary, City and Seller shall each have the right to terminate this Agreement, in which event no party shall have any further liability to the other. Within thirty (30) days after receipt of City's notice to terminate, Seller shall have the option to undertake the remedial measures in accordance with a remediation plan which is approved by all appropriate governmental authorities and approved by City (collectively, the "Plan"), in which event, the City's termination shall be revoked and this Agreement shall close as set forth herein, provided, however, City shall have no obligation to close unless and until Seller has delivered to City a certificate (the "Certificate") from a California licensed hazardous materials specialist that the Property has been remediated in accordance with the Plan. Should Seller elect to undertake remedial measures, it shall, in consultation with the appropriate governmental agencies, promptly initiate at its cost and expense such remedial measures in a timely manner. The results of the Tests (or any subsequent test conducted prior to the Close of Escrow) shall be deemed to represent the condition of the soil at the Close of Escrow. In the event the remedial measures are not complete and Seller has not delivered the Certificate to City within six (6) months from the date hereof, City shall have the further right to terminate this Agreement, in which event no party shall have any further liability to the other hereunder.
- 8.2 **Indemnity.** City agrees to indemnify Seller and save it harmless from all damages, actions, causes of action, claims, judgments, costs of litigation, and attorney's fees which may in any way arise out of or result from the Tests. City further agrees to repair as nearly as reasonably can be accomplished any damages to the area covered by the Tests and will restore said area to as near its original condition as can be reasonably accomplished.
9. **Counterparts.** This Agreement may be executed in counterparts, each of which when executed shall, regardless of the date of its execution and delivery, be deemed an original, and all counterparts together shall constitute one and the same instrument.
10. **Closing Statement.** Seller instructs Escrow Agent to release a copy of Seller's closing statement to City for the purpose of ascertaining if any reimbursements are due Seller.
11. **Loss or Damage to Improvements.** Except as provided in Section 8.2., loss or damage to the Property including any improvements thereon, by fire or other casualty, occurring prior to the recordation of the Grant Deed shall be at the risk of Seller. Except as provided in Section 8.2, in the event that loss or damage to the real property or any improvements thereon, by fire or other casualty, occurs prior to the recordation of the Grant Deed, City may elect to require that the Seller pay to City the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the total price by an amount equal of the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

12. **Eminent Domain Dismissal.** Seller and City acknowledge that this transaction is a negotiated settlement in lieu of condemnation, and Seller hereby agrees and consents to the dismissal or abandonment of any eminent domain action in the Superior Court of the State of California in and for the County of Orange, wherein the herein described property is included and also waives any and all claims to any money on deposit in the action and all claims to any money on deposit in the action and further waives all attorneys' fees, costs, disbursements, and expenses incurred in connection therewith. If, prior to the close of the execution of this transaction, Seller (or Seller's Tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's Tenant) is a named defendant, upon the close of escrow, Seller agrees and consents to City taking a default in the action.

13. **Warranties, Representations, and Covenants of Seller.** Seller hereby warrants, represents, and/or covenants to City that:
 - 13.1 **Pending Claims.** To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental City, domestic or foreign.
 - 13.2 **Encroachments.** To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.
 - 13.3 **Condition of Property.** Until the close of escrow, Seller shall maintain the property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the property.
 - 13.4 **Seller's Title.** Until the close of escrow, Seller shall not do anything which would impair Seller's title to any of the real property.
 - 13.5 **Utilities.** All utilities, without limitation, including gas, electricity, water, sewage, and telephone, are available to the Property, and to the best of Seller's knowledge, all items are in good working order.
 - 13.6 **Conflict with Other Obligation.** To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restriction, or other agreement or instrument to which Seller or Seller's Property may be bound.
 - 13.7 **Change of Situation.** Until the close of escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in the section not to be true as of the close of escrow, immediately give written notice of such fact or condition to City.
 - 13.8 **Authority.** Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to City as provided herein and to carry out Seller's obligations hereunder.

13.9 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

14. **Purchase of Property "As Is."** Buyer hereby agrees and acknowledges that (i) it is buying the Property on an "AS-IS" basis; (ii) it has made or will have made its own investigations and inspections of the Property, including, without limitation, the physical aspects of the Property and the Property's compliance with all laws applicable to the Property's current or intended use; (iii) in connection with its investigations and inspections of the Property it has contracted or had the opportunity to contract with certain advisors and consultants, including, but not limited to, environmental consultants, engineers and geologists, to conduct such environmental, hazardous material, geological, soils, hydrology, seismic, endangered species, archeological, physical, structural, mechanical and other inspections of the Property as Buyer deemed to be necessary; (iv) it has approved the reports of such advisors and consultants; (v) it is relying solely on such reports and its own investigations as to the Property, its condition and other characteristics and compliance with laws; (vi) except for the representations and warranties set forth in Section 14, it is not making the purchase of the Property in reliance upon any statements or representations, express or implied, made by Seller or its agents, as to the condition of or characteristics of the Property, its fitness for use for any particular purpose, or the Property's compliance with any zoning or other rules, regulations, laws or statutes applicable to the Property, or the uses permitted on or the development requirements for or any other matters relating to the Property. Except as set forth in Section 14, Seller has no liability nor responsibility to Buyer in connection with the matters set forth in this Section 15, including, without limitation, any liability under any laws, rules, regulations or ordinances regulating the environment, hazardous materials, or human health and safety, or any latent or patent defects.

BUYER'S INITIALS: _____

15. **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. City understands that Seller has not conducted any inspection of the Property regarding its suitability for sale. 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," "acutely hazardous waste," "restricted hazardous waste," or "extremely 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 byphenyls, (viii) listed under Article 9 or defined as "hazardous"; or "extremely hazardous" pursuant to Article 11 of Title 22 of

the California Code of Regulations, Chapter 20, (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 9601).

16. **Compliance With Environmental Laws.** Seller is not aware of any hazardous waste upon or in the Property. Upon the close of escrow city shall have accepted the Property in its present condition except as expressly herein otherwise provided. Seller shall not be responsible to City or any successor-in-interest of the City for any acts or omissions relating to the Property that occur after the close of escrow.
17. **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.
18. **Full and Complete Settlement.** The total compensation to be paid by City to Seller is all of Seller's interest in the property and any rights or obligations which exist or may arise out of the acquisition of the property for public purposes, including without limitation, Seller's interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the property by the City.
19. **Waiver of Relocation Assistance and Acquisition Claims.** The total compensation to be paid by Buyer for the Property is the Purchase Price, which consideration covers all land and to the extent that they may exist, any and all improvements, attached or detached furniture, fixtures and equipment, loss of business goodwill, and relocation assistance. The Purchase Price is the full and complete acquisition cost of the Property. Buyer shall have no obligation to Seller under the California Relocation Assistance and Real Property Acquisition statutes and guidelines. Except for any breach of terms or conditions contained in this Agreement, and except for any indemnitees and any other consideration provided in this Agreement, Seller waives and forever releases Buyer, including its successors, officers, employees, attorneys, agents, representatives and anyone else acting on Buyer's behalf, of and from any and all claims, demands, actions or causes of action, obligations, liabilities, or claims for further compensation for Seller's sale of the Property to Buyer only, whether known or unknown, and based upon or relating to Buyer's acquisition of the Property pursuant to this Agreement. By such release, Seller expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

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

Seller's Initials

20. **Tenants.** Except as provided in 9.2 above, the City shall hold Seller harmless from any and all claims for damages from the existing tenant.
21. **Broker's Commission.** Seller and City each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Seller and City agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.
22. **Waiver, Consent and Remedies.** Each provision of this Agreement to be performed by City and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and City's performance hereunder, as appropriate, and any breach thereof by City or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.
23. **Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, City and/or Escrow Agent in connection with this Agreement then as between City and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.
24. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to Seller:

Edward H. Gray and Shirley L. Gray
Co-Trustees of the Gray Family Trust
10733 Pico Vista Road
Downey, CA 90241

If to City:

City of Garden Grove
11391 Acacia Parkway
Garden Grove, CA 92640
Attention: Carlos Marquez

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

24. **Default.** Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within thirty (30) days from the date of the notice or such longer period if the nature of the default is such that more than thirty (30) days is required to cure such default. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within the time set forth herein.
25. **Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.
26. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
27. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
28. **Governing Law.** This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California.
29. **Invalidity of Provision.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
30. **Amendments.** No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by City and Seller.

31. **Time of Essence.** Time is of the essence of each provision of this Agreement
32. **Binding upon Successors.** The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.
33. **Facsimile Signatures.** A facsimile signature shall be deemed an original signature.

(SIGNATURES ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth herein above.

CITY OF GARDEN GROVE,
a municipal corporation

ATTEST:

City Clerk

City Manager

Date _____

APPROVED AS TO FORM:

Edward H. Gray and Shirley L. Gray,
Co-Trustees of the Gray Family Trust,
dated January 5, 1975



City Attorney

Date 1/19/10

By: _____ Date _____

Its: _____

By: _____ Date _____

Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION

LEGAL DESCRIPTION

All that certain property situated in the County of Orange, State of California, described as follows:

The South half of that portion of the Northeast quarter of the Southeast quarter of Section 3, Township 5 South, Range 10 West, B.B. and M., in the City of Garden Grove, described as follows:

Beginning at the Northeast corner of land conveyed to Vincent F. Boles and his wife, by deed recorded January 28, 1952 in Book 2279, Page 288 of Official Records; thence West along the North line of said land conveyed to Boles 330 feet to a point in the West line of the East 3 acres of the North 6 acres of the East; thence forth along the West line of said East 3 acres 132 feet; thence East parallel to the North line of the land conveyed to Boles 330 feet to a point in the East line of the Northeast quarter of the Southeast quarter of said section 3; thence South along said East 132 feet to the point of beginning.

Assessor's Parcel Number 101-652-04

EXHIBIT "B"

Non-Foreign Transferor Declaration

Section 1445 of the Internal Revenue Code of 1954, as amended ("Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, the undersigned hereby certifies the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U.S. employer identification number or social security number are ; and _____.
3. The Transferor's office address or mailing address is

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury we declare that we have examined this Certification and to the best of our knowledge and belief it is true, correct, and complete, and further declare that we have authority to sign this document on behalf of the Transferor.

Date: _____