

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

THIS AGREEMENT (hereinafter "PSA"), entered into on \_\_\_\_\_, 2021, 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 Gates Warner, LLC, a California Limited Liability Company (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 rights (hereinafter collectively "Said Real Property") legally described as follows:

**SEE EXHIBIT "A" – Legal Description  
and Exhibit "B" – Plat Map**

ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF  
(Commonly known as 1301 E. Warner Avenue, Santa Ana, CA 92707)  
(APN 014-281-19)

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.**

A. Seller agrees to convey Said Real Property to City, by Quitclaim Deed, at the office of Commonwealth Land Title Insurance Company, 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.

B. INTENTIONALLY REMOVED.

**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 Is, without warranty, and subject to 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 including those exceptions shown in Paragraph 15 below.

**3. Title Insurance.** City is responsible for procuring any title insurance it desires at its own expense.

**4. Escrow.** City agrees to open an escrow at the office of Commonwealth Land Title Insurance Company, 4100 Newport Place Drive, Suite 120, 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 "C"** 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 "C"** of the General Provisions of this Agreement.

Seller is not responsible for payment of any escrow fees, costs or expenses.

**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, temporary construction easement, fixtures & equipment (improvements pertaining to the realty), goodwill (if any), and severance damages, the total sum of **Seven Thousand, Two Hundred and 00/100 Dollars (\$7,200.00)**. City agrees to deposit said purchase price in escrow with the Escrow Agent within SIXTY (60) 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 Quitclaim Deed conveying said portion of Said Real Property to City;
- (c) Acceptance by City of a Temporary Construction Easement to City;

(d) Delivery to City of the policy of title insurance as hereinabove provided;

(e) Recordation of the Deed conveying said portion of 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 property, which shall be made free to Seller of all personal property.

8. **Rental and Occupancy By Seller.** INTENTIONALLY REMOVED.

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 realty), goodwill (if any), and severance damages.

13. **Estoppel by Deed** Seller and City agree that the conveyance of Said Real Property by Seller to City, as described in Paragraph 1, shall have the effect of estoppel by deed with respect to the contiguous real property belonging to Seller that is not the subject of this agreement.

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 15 Dartmouth, Newport Beach, CA 92660.

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. **As-is Purchase.** Buyer is purchasing fee title to the right of way fee acquisition area "as is", subject to all matters known, unknown and unsuspected. Except as expressly set forth herein, seller makes no representations or warranties, express or implied, with respect to the title to or condition of said real property, the suitability of said real property for buyer's intended use, or the presence of any hazardous substances or materials in any media on said real property. Buyer represents that it has conducted such inspections and testing as it has deemed appropriate and consulted with its own experts and consultants, and has the necessary sophistication in real estate to assume the risk of unknown and

unsuspected matters. This paragraph applies to all conditions of the property including but not limited to hazardous waste or toxic substances.

18. **INTENTIONALLY REMOVED.**

19. **INTENTIONALLY REMOVED.**

20. **INTENTIONALLY REMOVED.**

21. **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.

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

23. **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.

24. **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.

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

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

**31. Construction Contract and Curative Work.**

- (a) It is understood and agreed by and between the parties hereto in addition to the compensation shown in Paragraph 6 hereinabove, the City, its contractors or assigns, shall perform the following construction contract items at the time of the installation of the proposed project:

i. NONE

All work performed under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances and regulations relating to such work and shall be completed in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated or reconstructed by the City, shall be left in as good condition as found.

- (b) It is understood and agreed by and between the parties hereto that the compensation paid to Seller through this Agreement includes the value of the cost to remove, relocate, reconstruct and/or refurbish the following improvements located on the Property:

i. The site improvements (landscaping) will be reestablished and/or restored in kind as part of construction contract work (CCW).

**32. 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 Purchase and Sale Agreement on the date and year first written above.

**SELLER: Gates Warner, LLC, a California Limited Liability Company**

Tara C. Gates  
Tara C. Gates  
Chief Executive Officer

Date: 7-29-21

\_\_\_\_\_

Date: \_\_\_\_\_

**City/Buyer**  
**City of Santa Ana**

\_\_\_\_\_  
Kristine Ridge  
City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Daisy Gomez  
City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

John M. Funk  
John M. Funk  
Sr. Assistant City Attorney

Date: 8-9-21

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Nabil Saba, PE, PLS  
Executive Director  
Public Works Agency

Date: \_\_\_\_\_

**EXHIBIT "A" (PART TAKE FEE)**

**LEGAL DESCRIPTION**

R307513.19  
09-20-19  
REVISED  
02-24-20

EXHIBIT "A"  
LEGAL DESCRIPTION  
RIGHT OF WAY FEE ACQUISITION  
APN 014-281-19

That portion of Parcel 1, in the City of Santa Ana, County of Orange, State of California, as shown on a map filed in Book 121, Pages 45 through 46, inclusive, of Parcel Maps, in the office of the County Recorder of said County, described as follows:

Commencing at the Southwest corner of said Parcel 1; thence along the Southerly line of said Parcel 1 South 88°29'43" East 20.00 feet to the Easterly line of the Southern Pacific Railway Easement as shown on said Parcel Map also being the TRUE POINT OF BEGINNING; thence continuing South 88°29'43" East 9.57 feet; thence leaving said Southerly line North 43°29'43" West 8.48 feet to a line being parallel with and 6.00 feet Northerly of said Southerly line; thence along said parallel line North 88°29'43" West 3.58 feet to the said Easterly line of said easement; thence along said Easterly line South 01°24'25" West 6.00 feet to the TRUE POINT OF BEGINNING.

Containing an area of 40 square feet, more or less.

Subject to covenants, conditions, reservations, restrictions, rights-of-way and easements, if any, of record.

All as shown on Exhibit "B" attached hereto and by this reference made a part hereof.

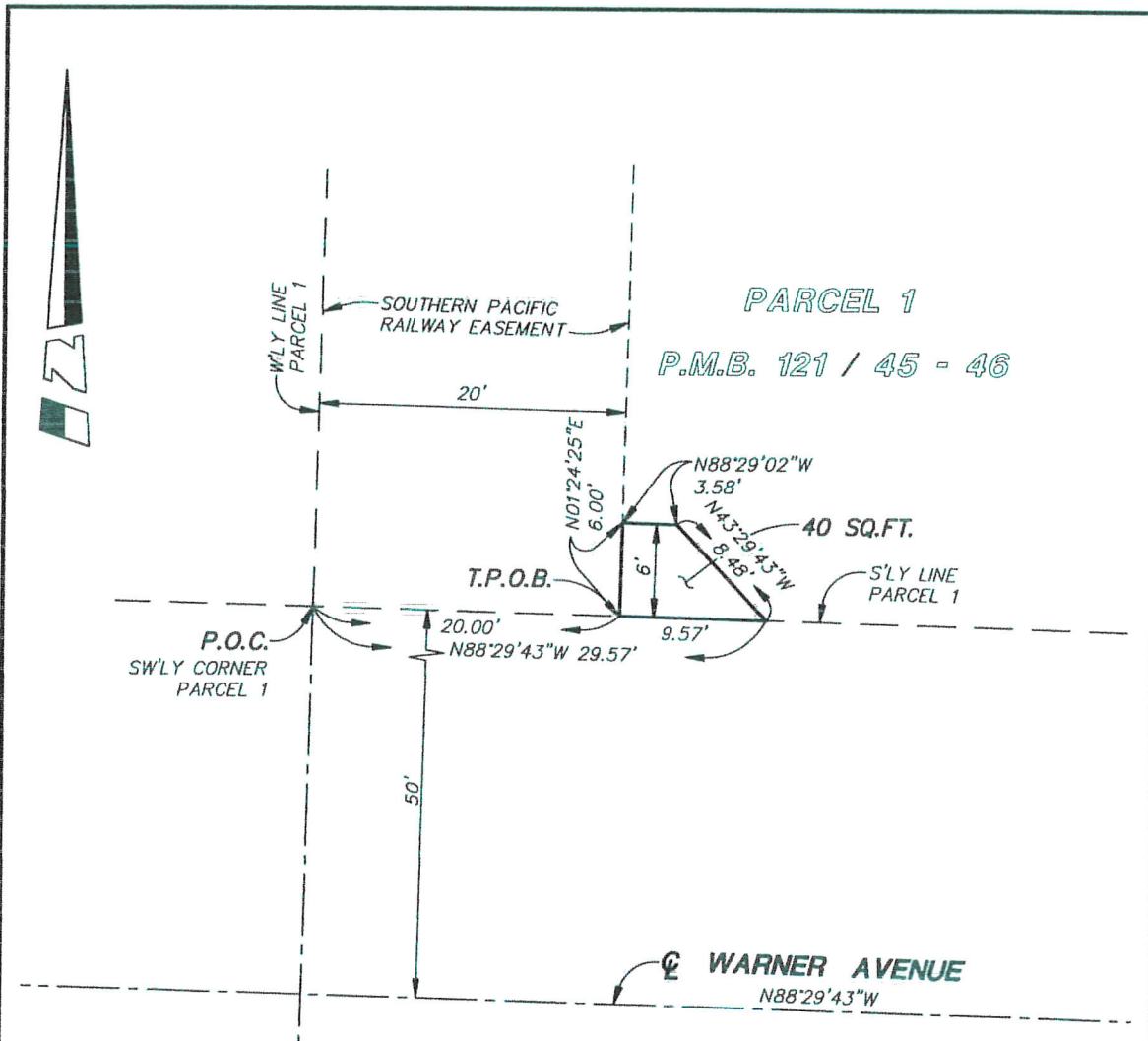
David W. Mackey  
DAVID W. MACKEY, PLS 8912





**EXHIBIT "B" (PART TAKE FEE)**

**PLAT MAP**



REVISED: 2/24/2020

**HUITT-ZOLLARS**

Huitt-Zollars, Inc. Irvine  
2603 Main Street, Suite 400, Irvine, CA 92614  
Phone (949) 988-5815 Fax (949) 988-5820

APPROVED BY

*David V. Mackey*

2/24/2020

SKETCH TO ACCOMPANY  
A LEGAL DESCRIPTION

**EXHIBIT 'B'**  
**RIGHT OF WAY**  
**FEE ACQUISITION**  
**A.P.N. 014-281-19**

SCALE	1"=10'
DRAWN BY	DWM
CHECKED BY	RHH
DATE	9/20/2019
JOB NO.	R307513.19

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## **EXHIBIT "C" (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.