



DATE: February 24, 2010
TO: Honorable Mayor and City Councilmembers
FROM: Economic and Community Development Department
SUBJECT: **MISSION AVENUE WIDENING AT FRANCISCA DRIVE**

SYNOPSIS

Staff recommends that the City Council approve a real property acquisition agreement with Fredrick H. and Mary Lou Beltran in the amount of \$20,570 for the acquisition of a portion of the property located at 4513 Mission Avenue needed for the Mission Avenue Widening at Francisca Drive Project; and authorize the Mayor to execute the agreement and the City Clerk to accept and file the grant deed with the County Recorder.

BACKGROUND

Mission Avenue from Old Grove Road to Frazee Road is identified on the Master Transportation Plan as a secondary arterial which requires an 84-foot right-of-way and provides 4 lanes of traffic. Currently Mission Avenue between Old Grove Road and Valley Heights Drive has 3 travel lanes (1 lane eastbound and 2 westbound lanes) due to the narrowing of the right-of-way near Francisca Drive.

A project for the widening of Mission Avenue at Francisca Drive is in the current Capital Improvement Program ("CIP"). An additional 17 feet of right-of-way is needed from the private residence located at 4513 Mission Avenue in order to construct the project and provide the room needed to create the additional eastbound lane.

The widening project includes the roadway improvements, frontage improvement that include curb, gutter and sidewalk, driveway approach for access to the property, and retaining wall with drainage, landscaping and sound attenuation fencing.

Staff obtained an independent appraisal of the portion of the property needed for the project and presented an offer to purchase the right-of-way from the property owner. An acquisition agreement has been negotiated with the owner, Fredrick H. and Mary Lou Beltran, for the purchase of the property needed for the project at a purchase price of \$20,570.

ANALYSIS

The proposed acquisition agreement reached with the owner provides for the payment of the purchase price of \$20,570 as total compensation for the required land and affected private improvements and landscaping. Rights to be acquired in the property include 1,633 SF for highway right-of-way from the 10,500 SF larger parcel and 779.40 SF of temporary construction easement.

The preliminary title report obtained from Chicago Title Company indicates that the property is free of any mortgages and other adverse encumbrances.

Since the owner holds clean title in the property the transaction will be handled outside of an escrow and directly with the owner. This will eliminate additional costs for escrow services. The purchase price of \$20,570 is to be remitted to the owner within 15 days of City Council approval of the acquisition agreement.

The acquisition of the portion of the property needed for the project will provide the additional right-of-way to improve Mission Avenue between Old Grove Road and Valley Height Drive to its classification as a 4-lane secondary arterial.

The existing right-of-way for this segment of Mission Avenue was relinquished from the State Department of Transportation upon the completion and opening of State Route 76 Expressway. Typically the State acquires highway rights-of-way in fee interest. Therefore, to be consistent with the existing rights held by the City in Mission Avenue the property needed for the project will be conveyed by grant deed versus an easement.

FISCAL IMPACT

The Mission Avenue Widening at Francesca Drive project (account 901561400561) has an approximate carry forward balance of \$225,909 from FY 2008-09. Therefore, sufficient funds are available for this property acquisition.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

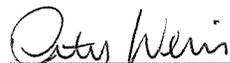
Staff recommends that the City Council approve a real property acquisition agreement with Fredrick H. and Mary Lou Beltran in the amount of \$20,570 for the acquisition of a portion of the property located at 4513 Mission Avenue needed for the Mission Avenue Widening at Francisca Drive Project; and authorize the Mayor to execute the agreement and the City Clerk to accept and file the grant deed with the County Recorder.

PREPARED BY:

SUBMITTED BY:



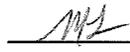
William F. Marquis
Senior Property Agent



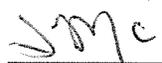
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Jane McVey, Economic and Community Development Director



Douglas E. Eddow, Real Property Manager



Teri Ferro, Financial Services Director



PROJECT: Mission Avenue Widening
PARCEL NO.: 158-122-08

REAL PROPERTY ACQUISITION AGREEMENT

This REAL PROPERTY ACQUISITION AGREEMENT ("Agreement") dated as of January 4, 2010, solely for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, in and of the State of California, hereinafter referred to as "City", and FREDRICK H. BELTRAN and MARY LOU BELTRAN, husband and wife, as joint tenants, hereinafter referred to as "Grantor". This Agreement shall be effective as of the date this Agreement is approved by the Oceanside City Council and signed by City (the "Effective Date").

WITNESSETH THAT:

WHEREAS, City has determined that the public interest and necessity require the acquisition of certain real property for public street right-of-way purposes and appurtenant uses, including a portion of Grantor's real property located at 4513 Mission Avenue, Oceanside, California, described in a Legal Description thereof designated as Exhibit "A" and shown on a sketch thereof marked Exhibit "B" attached to the Grant Deed (the "Grant Deed"), attached hereto and incorporated herein by reference (the "Property");

WHEREAS, said right-of-way to be acquired for the widening of Mission Avenue consists of 1,633 square feet of entire 10,500 square foot parcel of land owned by Grantor, together with 779.40 square feet more or less of temporary construction easement;

WHEREAS, City made an offer to purchase the interests sought in Grantor's real property under the threat of its power of Eminent Domain; and

WHEREAS, Grantor is informed and acknowledges an awareness of City's obligation to offer Just Compensation for the real property interests sought and that such compensation shall be in an amount not less than City's highest approved appraisal.

NOW THEREFORE, in consideration of which, and the other considerations hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. The parties hereto have set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for conveyance of the interests sought by City in the Property and shall relieve the City of all further obligation or claim on this account.

2. Concurrent with the execution of this Agreement, Grantor shall execute and deliver to City the duly executed and notarized Grant Deed, in recordable form, conveying the necessary interests sought by City in Grantor's real property.

3. For Grantor's conveyance of the interests sought by City in the Property, City shall pay Grantor the sum of **Twenty Thousand Five Hundred Seventy Dollars (\$20,570.00)** as Just Compensation for said land, existing improvements and temporary construction easement. The above stated Just Compensation to be payable within fifteen (15) business days after the Effective Date of this Agreement and remitted directly to Grantor outside of an escrow, for the conveyance of the interests sought in Grantor's property by City free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes of said property to City, except:

a. Taxes for the tax year in which the property is conveyed shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid.

b. Covenants, conditions, restrictions and reservations of record, or contained in the above referenced Grant Deed.

c. Easements or Rights-of-Way over said land for public or quasi-public utility or public purposes, if any.

4. Grantor hereby acknowledges that said Just Compensation represents full settlement between the parties hereto and includes any and all compensation Grantor may be entitled to by reason of the acquisition of the real property interest described herein, except as provided for herein.

5. City shall pay all escrow and recording fees incurred in this transaction, if any, and, if title insurance is desired by the City, the premium charged therefor. City shall have the authority to deduct and pay from the amount of said Just Compensation, any amount necessary to satisfy any delinquent taxes due in any fiscal year except the fiscal year in which the property rights are transferred, together with penalties and interest thereon, and/or non-delinquent assessments or bonds except those which title is to be taken subject to in accordance with the terms of this Agreement.

6. Any and all monies payable under this Agreement, up to and including total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or trust deed(s) shall, upon demand(s), be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder; said mortgagee(s) or beneficiary(s) to furnish to Grantor with good and sufficient receipt showing monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.

7. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the subject property by the City shall commence upon the filing and recordation of the Grant Deed in the Office of the County Recorder of San Diego County.

8. In consideration of the City's waiving the defects and imperfections in the record title, if any, as set forth herein, the undersigned Grantor covenants and agrees to indemnify and hold the City harmless from any and all claims that other parties may make or assert on the title to the

property. The Grantor's obligation herein to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement.

9. Any notice deemed necessary to fulfill the terms, conditions or covenants of this Agreement and/or necessary to complete the transaction contemplated hereunder shall be hand delivered or mailed first class, postage prepaid, or by overnight courier, delivery charge prepaid, to the following respective addresses:

If to City: City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

With Copy to: City of Oceanside
ATTN: City Attorney
300 North Coast Highway
Oceanside, CA 92054

If to Grantor: Fredrick H. and Mary Lou Beltran
4513 Mission Avenue
Oceanside, CA 92057

Any written notice given under this Agreement shall be deemed received on the actual date of delivery if hand delivered or by overnight courier to the other party hereto or forty-eight (48) hours after deposit of such notice in the U.S. Mail within San Diego County, California, addressed as provided above, or as changed in writing to the other party hereto, with postage or delivery charge fully paid.

10. Each party hereto warrants that the person(s) subscribing hereunder has the power and authority to bind said party and does so bind said party, his heirs, assigns, personal representatives, or their successors in interest.

11. Time is of the essence of this Agreement and each party shall promptly execute all documents necessary to effectuate the intent herein and shall perform in strict accordance with each of the herein contained provisions.

12. The parties shall execute and deliver any instruments in writing necessary to carry out any agreement, term, condition, or assurance in this Agreement whenever occasion shall arise and request for such instruments shall be made.

13. City and Grantor mutually covenant that no brokerage or real estate agent fees or commissions shall be due and payable on account of this transaction and each party shall hold the other harmless from any claims for such fees or commissions claimed by a broker or real estate agent claiming through the party.

14. City and Grantor agree that this Agreement is entered into in lieu of acquisition of the interests sought in Grantor's real property by the City through the exercise of its power of eminent

domain. If City and Grantor had not voluntarily entered into this Agreement for the acquisition of the interests in Grantor's real property for said public improvement project, City would institute proceedings to acquire the property rights by eminent domain. The threat of the exercise of the power of eminent domain is an inducement for Grantor to enter into this Agreement. Grantor agrees that this property transaction includes any and all payments for relocation expenses as may be required by State or Federal law and that Grantor shall defend and indemnify City from any claim by Grantor or any person claiming through Grantor for relocation assistance as a result of City's acquisition of interests sought in Grantor's real property.

15. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than City and Grantor any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of City or Grantor shall be for the sole and exclusive benefit of City and Grantor, their successors in interest or assigns.

16. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

17. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

18. This Agreement shall inure to the benefit of and shall be binding upon City, Grantor, and their respective heirs, successors and assigns.

19. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of City or Grantor to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

20. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or written agreements that are not expressly set forth in this Agreement or the related documents being executed in connection with this Agreement.

22. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

23. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon the parties shall use a mediator appointed by the Judicial Arbitration and Mediation Service (JAMS) in San Diego County. The cost of mediation shall be shared equally by the parties.

24. The parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no party, agent or attorney of any party has made a promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other party to execute this Agreement. Each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.

25. Each individual signing below represents and warrants that he/she has the authority to execute this Agreement on behalf of and bind the party he/she purports to represent.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of but not necessarily on, the day and year first above written.

GRANTOR:

Fredrick H. Beltran and Mary Lou Beltran,
husband and wife, as joint tenants

CITY:

City of Oceanside, a municipal corporation

By: *Fredrick H. Beltran*
Fredrick H. Beltran

By: _____
Mayor of the City of Oceanside

By: *Mary Lou Beltran*
Mary Lou Beltran

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: *Debra M. [Signature]*
City Attorney

NOTARY ACKNOWLEDGEMENT OF GRANTOR'S SIGNATURE(S) TO BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

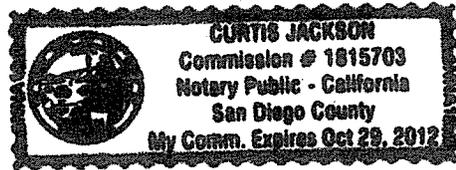
State of California)
County of San Diego)^{SS.}

On 1/12/10 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Frederick Hal Beltran and Mary Lou Beltran
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

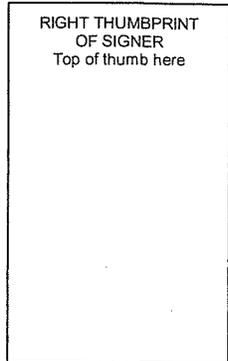
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

A.P.N. 158-122-08 (Portion)

SPACE ABOVE THIS LINE FOR RECORDER'S USE
CITY DOCUMENT NO.

THE UNDERSIGNED DECLARES THAT
NO DOCUMENTARY TRANSFER TAX DUE
R&T CODE §11922
FOR BENEFIT OF PUBLIC AGENCY – NO FEES DUE
GOV'T CODE §27383

GRANT DEED
(Individual)

THIS CONVEYANCE IS BEING MADE FOR THE PURPOSE OF PUBLIC STREET RIGHT-OF-WAY
FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FREDRICK H. BELTRAN and MARY LOU BELTRAN, husband and wife as joint
tenants,

hereby GRANT(S) to the CITY OF OCEANSIDE, a municipal corporation, of the State
of California, that certain real property situated in the City of Oceanside, County of San
Diego, State of California, more particularly described as follows:

See Legal Description marked Exhibit "A" and Sketch marked Exhibit "B",
attached hereto and incorporated herein by reference

Together with a TEMPORARY CONSTRUCTION EASEMENT upon, over and across
that certain portion of Grantor's real property situated in the City of Oceanside, County
of San Diego, State of California, more particularly described as follows:

That portion of that Parcel described in Grant Deed recorded April 21,
1977 as File/Page No. 77-147553 in the Office of the County Recorder of
San Diego County described as follows:

Being the Southeasterly 10.00 Feet of the Northwesterly 52.00 Feet of the
above described Parcel.

Containing 779.40 Square Feet more or less

It is understood that said Easement is Temporary and shall terminate either upon the completion of construction of that portion of Mission Avenue lying adjacent to the above described parcel or December 31, 2011, whichever date occurs first. It is also understood that upon said termination date the City shall have no further obligation or liability in connection with said parcel.

Dated: 1-12-10

Frederick H. Beltran
Frederick H. Beltran

Mary Lou Beltran
Mary Lou Beltran

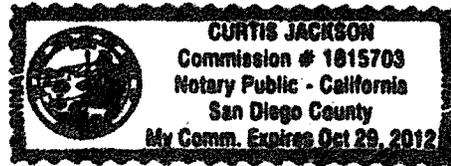
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)^{SS.}

On 1/12/10 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Frederick Hal Beltran and Mary Lou Beltran
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in ~~his~~ ~~her~~ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Grant Deed

Document Date: 1/12/10 Number of Pages: 2

Signer(s) Other Than Named Above: NA

Capacity(ies) Claimed by Signer

Signer's Name: Frederick Hal Beltran and Mary Lou Beltran

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

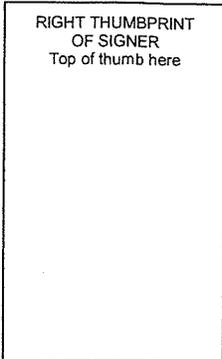


EXHIBIT "A"
LEGAL DESCRIPTION

VESTING: FREDERICK H. BELTRAN AND MARY LOU BELTRAN, HUSBAND AND WIFE
AS JOINT TENANTS.

APN: 158-122-08

THAT PORTION OF THAT PARCEL DESCRIBED IN GRANT DEED RECORDED APRIL
21, 1977 AS FILE/PAGE NO. 77-147553 IN THE OFFICE OF THE COUNTY
RECORDER OF SAN DIEGO COUNTY, BEING IN THE CITY OF OCEANSIDE, COUNTY
OF SAN DIEGO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

THE SOUTHEASTERLY 17.00 FEET OF THE NORTHWESTERLY 42.00 FEET OF THE
ABOVE DESCRIBED PARCEL.

CONTAINING 1,633 SQUARE FEET MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT 'B'.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY
DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

SIGNATURE



LICENSED LAND SURVEYOR

DATE February 7, 2006



EXHIBIT "B"

MISSION AVENUE

EXISTING WIDTH 42'

$\Delta=1^{\circ}44'00''$
 $R=725.00'$
 $L=21.93'$

EXISTING WIDTH 25'

76.50'

$S17^{\circ}00'00''E$

17.95'

$\Delta=1^{\circ}16'21''$
 $R=708.00'$
 $L=15.73'$

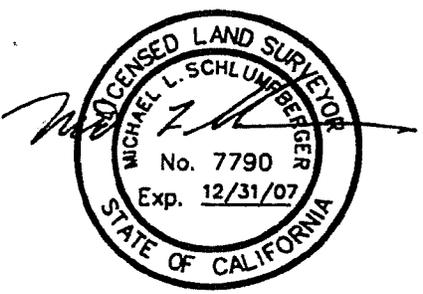
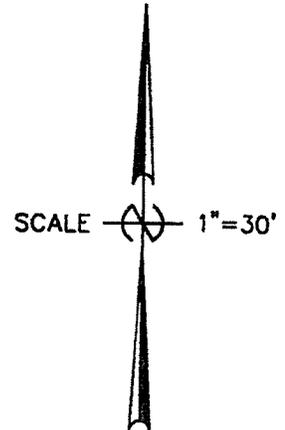
$N52^{\circ}46'30''E$

$N32^{\circ}22'00''W$

$N52^{\circ}46'30''E$

4513 MISSION AVENUE
 158-122-08

EXISTING WIDTH 42'



NOTE: ALL DIMENSIONS SHOWN HEREON ARE COMPILED FROM RECORD DATA.

 DENOTES AREA OF ROAD EASEMENT
 1,633 SQ.FT. MORE OR LESS

Right-Of-Way Engineering Services, Inc.
 Land Surveying
 4187 Avenida de la Plata Ste. 114 • Oceanside, CA 92056
 (760) 732-1368 FAX (760) 732-1387
 Drawing file name: Beltran-Mission Avenue plat.dwg

ASSESSORS' PARCEL NO.: 158-122-08

CITY OF OCEANSIDE

VESTING: FREDERICK H. BELTRAN AND MARY LOU BELTRAN, HUSBAND AND WIFE, AS JOINT TENANTS

DATE: FEBRUARY 7, 2006

SHEET 1 OF 1