



## RESOLUTION NO. 10443

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE FINDING AND DETERMINING THAT THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY REQUIRE THE ACQUISITION FOR PUBLIC PURPOSES OF PROPERTY LOCATED AT 350-352 S. MAIN STREET AND AUTHORIZING THE EXECUTION OF ESCROW INSTRUCTIONS THEREFORE.**

**WHEREAS**, the City of Orange (the City) is a municipal corporation which exercises governmental functions and powers and is organized and existing under the laws of the State of California; and

**WHEREAS**, Section 37350 of the Government Code of the State of California authorizes a city to purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of it for the common benefit; and

**WHEREAS**, Charles Cottingham and Patricia Cottingham, Trustees of the the Cottingham Family Revocable Trust, as their interests appear of record (Seller), is the current owner of that certain real property located in the City of Orange, County of Orange, State of California, and legally described on **Exhibit "A-C" to the City of Orange's offer letter** which is attached hereto and incorporated herein by this reference (the Property); and

**WHEREAS**, Seller desires to sell and the City desires to purchase the Property in accordance with the terms and provisions of the City of Orange offer letter attached hereto (the Agreement); and

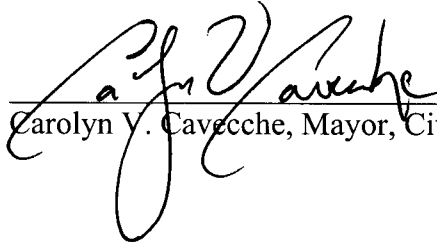
**WHEREAS**, the City Council has duly considered all of the terms and conditions of the Agreement, in the form presented, together with any testimony received by the City Council, and believes that the acquisition of the Property from Seller is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements.

**NOW, THEREFORE**, the City Council of the City of Orange resolves, on the basis of the facts set forth in the agenda report and any testimony received as follows:

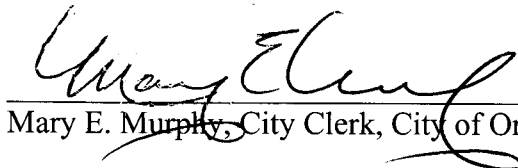
1. The foregoing recitals are true and correct.
2. The public interest, convenience and necessity require, and the City Council hereby orders, the acquisition by the City from Seller for public purposes of the fee simple estate in the Property, subject to easements, covenants, rights and rights-of-way of record, for the sum of Two Hundred Eighty-Six Thousand Six Hundred Forty-Seven Dollars (\$286,647) and related escrow costs, through escrow in accordance with the terms and provisions of the Agreement.

3. The City Council finds and determines that the terms and provisions of the Agreement between the City and Seller with respect to the acquisition of the Property are approved and that the Mayor is authorized to execute all escrow and related documents to effectuate the sale on behalf of the City.

**ADOPTED** this 13<sup>th</sup> day of April, 2010.

  
Carolyn V. Cavecche, Mayor, City of Orange

**ATTEST:**

  
Mary E. Murphy, City Clerk, City of Orange

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the 13<sup>th</sup> day of April, 2010, by the following vote:

AYES:	COUNCILMEMBERS: Smith, Cavecche, Dumitru, Bioldeau
NOES:	COUNCILMEMBERS: None
ABSENT:	COUNCILMEMBERS: Murphy
ABSTAIN:	COUNCILMEMBERS: None

  
Mary E. Murphy, City Clerk, City of Orange



# CITY OF ORANGE

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**PUBLIC WORKS DEPARTMENT**[www.cityoforange.org](http://www.cityoforange.org)**ENGINEERING DIVISION**  
(714) 744-5544  
FAX: (714) 744-5573**MAINTENANCE DIVISION**  
(714) 532-6480  
FAX: (714) 532-6444**TRAFFIC DIVISION**  
(714) 744-5540  
FAX: (714) 744-5573**WATER DIVISION**  
(714) 288-2475  
FAX: (714) 744-2973

February 23, 2010

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Charles Grant Cottingham, Trustee  
Patricia G. Cottingham, Trustee  
78181 Crimson Court  
La Quinta, CA 92253

RE: City of Orange, Main Street Improvement Project  
(APN 390-274-08, 350-352 S. Main Street)

Dear Property Owner:

The City of Orange ("City") has approved a project to widen and improve Main Street from Chapman Avenue to Stewart Drive ("Project"). This Project will require the acquisition of Fee Title to a small portion of your total property (1,500 square feet), plus two Temporary Construction Easements. The legal description of the property being acquired is attached hereto as Exhibit A and shown on a map attached hereto Exhibit B. Temporary Construction Easement "A" (469 square feet) is for a period of no longer than six months. This is along Main Street. Temporary Construction Easement "B" (1,017 square feet) is for a period no longer than two weeks. This is for the area in the parking lot and will allow the contractor to work within your parking lot. The Temporary Construction Easement Areas (469 and 1,017 square feet) are described and shown on Exhibits C and D, also attached hereto. The proposed fee and temporary construction easement acquisition are hereafter referred to as the "Property". All of the above will be presented in Section 1 of this letter. In addition, a portion (140 square feet) of the Dolly's Donuts building facing Main Street will require removal. The City's proposed compensation for this is presented and further explained in Section 2 of this letter.

It is the policy of the City to acquire property that is in private ownership only when it is necessary to do so and through voluntary purchase if possible. The City makes every effort to be fair and equitable to the property owner.

Section 1     -     LAND PURCHASE

Pursuant to California law, the City has obtained and approved an appraisal for the fair market value of the Property to be acquired, including the value of the loss of any improvements. Attached hereto as Exhibit E is the City's Appraisal Summary Statement fixing the amount established by the City as just compensation for the Property proposed to be acquired. This includes the purchase of 1,500 square feet of land, landscaping, hardscape, loss of 140 square feet of the building, and the temporary construction easements. Based on this appraisal, the City is offering the full appraised value of \$97,961.00 as just compensation for all of those interests it seeks to acquire in the Property.

The amount offered herein is the full amount which the City believes to be just compensation for all interests in the portions of the Property to be acquired as described in Exhibits A, B, C and D. Division of the offered amount among other parties possessing an interest in the Property will be Charles Grant Cottingham and Patricia G. Cottingham's (hereafter, "property owner") responsibility. The offer disregards any increase or decrease in the fair market value of the Property prior to the date of valuation which is caused by the Project.

All improvements within the temporary construction easement area will be replaced or reconstructed as necessary with no expense to the property owner or any tenant. The existing "Dolly's Donuts / Happy Teriyaki" will also be relocated at no cost to the property owner as per the construction plat attached as Exhibit D. Any operating water irrigation system affected will be relocated.

The City will provide a minimum 30-day written notice to both the property owner and any tenant prior to the commencement of construction.

Under the terms of this offer, the property owner will convey title to those legal interests (i.e., fee and temporary construction easement) sought to be acquired by the City herein through escrow, subject only to such conditions, covenants, restrictions, and usual utility easements of record as are approved by the City. Title must be delivered free of any liens or loans of record. The City will pay the escrow fees incurred through escrow including the title insurance policy and cost of publication.

This offer entered into based on the representation of the property owners, as well as on the understanding and condition that said owner is entitled to all compensation from the City's purchase of the property interests described in Exhibits A, B, C, and D. The Property Owners expressly agree and the offer is further conditioned on the agreement that the Property Owners will obtain the necessary quitclaim deeds or any other documentation required to clear title through escrow of any leasehold or tenants interest.

If this offer is acceptable to the property owner, please so indicate to the undersigned, in writing by signing on page 3. This offer is subject to approval and ratification by the Orange City Council and no binding contract will be formed until the City Council accepts and ratifies the terms of this offer. Following receipt of the property owner's acceptance and approval by the City Council, the City will

open escrow. The escrow instructions will provide for a 45-day escrow period, although the City will consider a request for a different length of escrow.

If you are not satisfied with this offer of just compensation, and have relevant information regarding the value of the property that you would like the City to consider, please forward the information to me. Also, should you wish to have an independent appraisal of the property prepared by a State of California licensed appraiser, the City will reimburse up to \$5,000.00 for reasonable costs thereof. If you do retain the services of an appraiser, please notify me within 21 days from the date of this offer with the name, license number, and qualifications of the appraiser. Should the property owner desire to meet both myself and the project engineer, to see the construction plans, etc., please contact me directly to arrange a meeting at Orange City Hall.

In addition, you should be aware that in the event negotiations fail to result in an agreement, the City may proceed with pursuing an eminent domain proceeding. If the City decides to proceed with acquisition of the property interests described herein through eminent domain the property owner has specified rights under eminent domain law, which rights are set forth in the enclosed informational pamphlet.

If for any reason the property owner should not see fit to accept this offer, please be advised that this letter and the offer made herein are tendered under the provisions of Evidence Code Section 1152, and shall not be admissible to prove the City's liability, and may not be used as an admission of value in any eminent domain or other proceeding which may subsequently be initiated.

The above offer (Section 1) of the City of Orange is accepted.

Charles Grant Cottingham,  
Trustee of the Cottingham Family  
Revocable Trust, Dated May 1, 2001

Patricia G. Cottingham,  
Trustee of the Cottingham Family  
Revocable Trust, Dated May 1, 2001

By Charles Grant Cottingham Trustee

By Patricia G. Cottingham

Date 3/16/10

Date 3-25/10

THIS WOULD HAVE BEEN INCLUDED IN THE APPRAISAL AMOUNT IF  
THE APPRAISER HAD BEEN MADE AWARE OF IT

\* { IN ADDITION SELLER IS TO RECEIVE \$3,681.00  
FOR COMMON AREA MAINTENANCE FEE FOR A SIX  
MONTH PERIOD OF TIME. - MARK WINTERS 3/15/10

\* ADDITIONAL \$5,000. - FROM UNUSED APPRAISAL FUNDS. -

Section 2 - BUILDING CUT & RE-FACE / REMODEL

The City has obtained a bid proposal from a licensed and bonded contractor for the removal of the front 140 square feet of the Dolly's Donuts building and re-facing of the front. This is shown as attached Exhibit F. This bid amount is \$171,433.00. The City is willing to pay the property owner this additional amount, plus an administrative cost (5% of bid amount) of \$8,572.00 for a total of \$180,005.00, to remove the 140 square feet of the Dolly's Donuts building that is located on the portion of the Property that the City is offering to purchase in Section 1, for the Project. The property owner would need to have the 140 square feet removed on or before January 31, 2011. If the property owner should elect to accept this option, \$90,005.00 will be paid to the property owner upon the approval and ratification of this offer by the Orange City Council. The remaining \$90,000.00 will be paid to the property owner upon the future right-of-way area being cleared of the 140 square feet of the Dolly's Donuts building. If the property owner elects not to accept the \$180,005.00 to remove the 140 square feet of the Dolly's Donuts building and re-face it, the City will have it done as part of the Project.

If this offer is acceptable to the property owner, please so indicate in writing by signing on page 4 and returning the original to the undersigned. This offer is subject to approval and ratification by the Orange City Council and no binding contract will be formed until the City Council accepts and ratifies the terms of this offer.

The above offer (Section 2) of the City of Orange is accepted.

Charles Grant Cottingham,  
Trustee of the Cottingham Family  
Revocable Trust, Dated May 1, 2001

Patricia G. Cottingham,  
Trustee of the Cottingham Family  
Revocable Trust, Dated May 1, 2001

By Charles Grant Cottingham trustee

By Patricia G. Cottingham

Date 3/16/10

Date 3-25-10

Please let us know within 30 days from the date of this letter if the City's offers are acceptable. As always, should you have any questions or concerns, please feel free to contact me at (714) 744-5558 or e-mail at [mwinters@cityoforange.org](mailto:mwinters@cityoforange.org).

Very truly yours,

Mark R. Winters

Mark R. Winters  
Real Property Agent

# EXHIBIT A

CITY OF ORANGE  
DEPARTMENT OF PUBLIC WORKS  
ORANGE COUNTY, CALIFORNIA

LEGAL DESCRIPTION

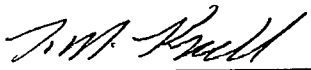
LEGAL DESCRIPTION FOR THE PROPOSED WIDENING OF MAIN STREET  
ADDRESS: 350-352 S. MAIN STREET, ORANGE, CALIFORNIA  
ASSESSOR'S PARCEL NUMBER: 390-274-08

THE EASTERLY 16.00 FEET OF PARCEL 4 IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 131, PAGES 22 AND 23, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 1,500 SQUARE FEET OR 0.034 ACRES, MORE OR LESS.

PREPARED BY ME OR UNDER MY DIRECTION

  
\_\_\_\_\_  
THEODORE M. KRULL  
L.S. 5848 Exp. 12/31/10

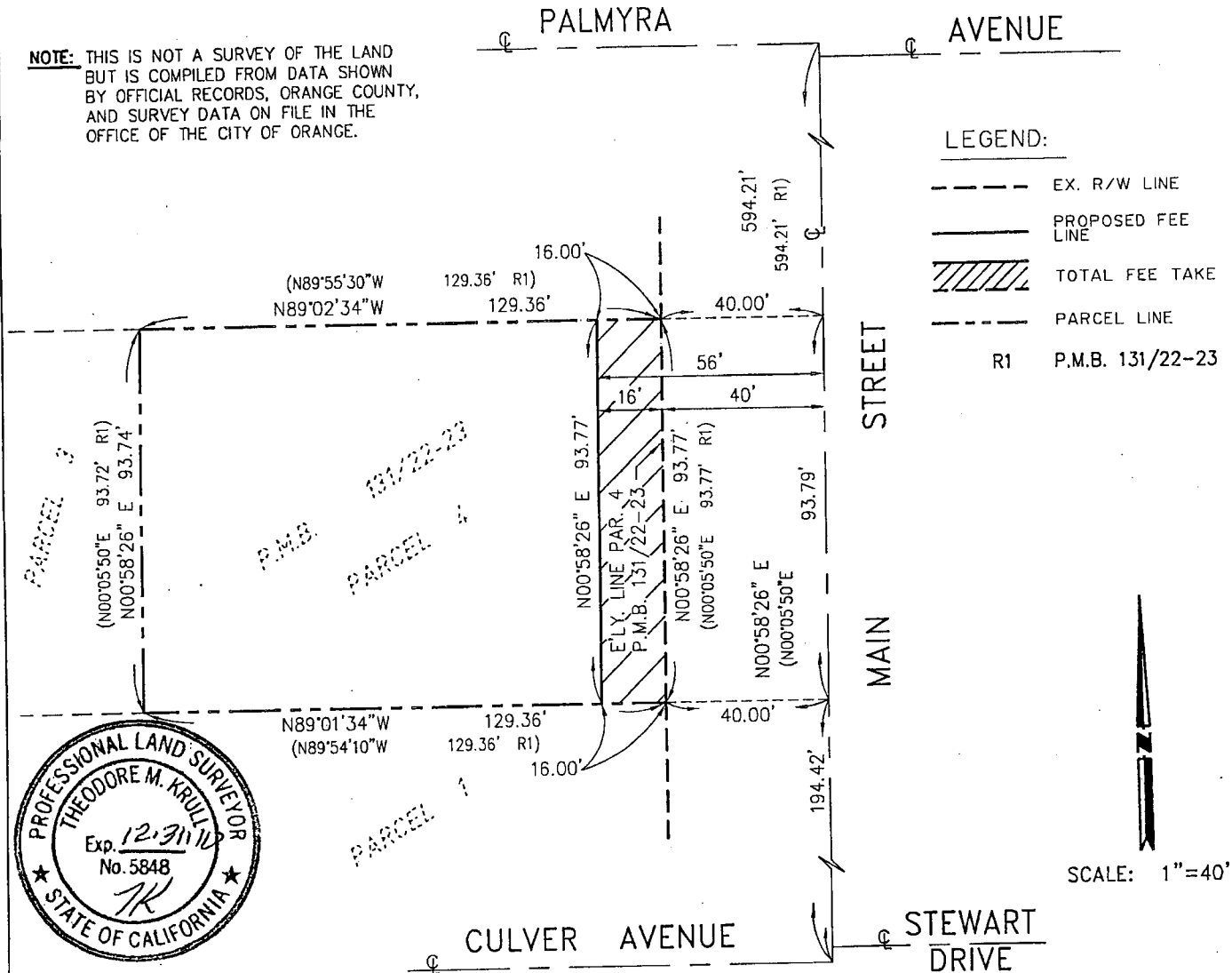
7-30-09  
Date



# EXHIBIT B

CITY OF ORANGE  
DEPARTMENT OF PUBLIC WORKS  
ORANGE COUNTY, CALIFORNIA

**NOTE:** THIS IS NOT A SURVEY OF THE LAND  
BUT IS COMPILED FROM DATA SHOWN  
BY OFFICIAL RECORDS, ORANGE COUNTY,  
AND SURVEY DATA ON FILE IN THE  
OFFICE OF THE CITY OF ORANGE.



*Theodore M. Krull* 7-30-09  
THEODORE M. KRULL DATE  
REGISTRATION EXPIRES DECEMBER 31, 2010

WORK DESCRIPTION THE WIDENING OF MAIN STREET, ORANGE, CA A.P. No. 390-274-08

LOCATION 350-352 S. MAIN STREET S.P. No. 3095 TRACT No.       

VESTING: CHARLES GRANT COTTINGHAM AND PATRICIA G. COTTINGHAM, TRUSTEES OF THE  
COTTINGHAM FAMILY REVOCABLE TRUST DATED MAY 1, 2001

BOOK        PAGE       

DRAWN JWS DATE 07/29/09 CHECKED TMK DATE 07/29/09 RECORDING DATE        BOOK        PAGE        FILE       

PREPARED BY: KFM Engineering Inc. (949) 580-3838



# EXHIBIT C

## TEMPORARY CONSTRUCTION EASEMENT

FOR VALUABLE CONSIDERATION, THE UNDERSIGNED OWNERS HEREBY GRANTS PERMISSION TO THE CITY OF ORANGE, ITS OFFICERS, EMPLOYEES, AGENTS, INVITEES, AND EMPLOYED CONTRACTORS, HEREINAFTER COLLECTIVELY REFERRED TO AS CITY, TO ENTER UPON, TO PASS AND TO REPASS OVER AND ALONG THAT PORTION OF ITS LAND DESCRIBED AND SHOWN ON THE PLAT ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, FOR THE PURPOSE OF PROVIDING ACCESS AND WORKING AREA FOR GRADING AND FOR THE CONSTRUCTION OF THE STREET WIDENING OF MAIN STREET; TO ENTER UPON, TO PASS AND REPASS OVER AND ALONG SAID LAND AND TO DEPOSIT TOOLS, IMPLEMENTS AND OTHER MATERIALS THEREON BY SAID CITY AND BY PERSONS UNDER CONTRACT WITH IT AND THEIR EMPLOYEES WHENEVER AND WHEREVER NECESSARY FOR THE PURPOSES SET FORTH.

THIS PERMISSION IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS BEING FULFILLED BY THE CITY:

- (A) UPON COMPLETION OF STREET WIDENING WORK, ALL SURFACE IMPROVEMENTS SHALL BE RESTORED TO THE SAME GENERAL CONDITIONS AS EXISTED PRIOR TO THE BEGINNING OF SAID CONSTRUCTION WORK.
- (B) CITY SHALL INDEMNIFY THE UNDERSIGNED AGAINST AND HOLD THE UNDERSIGNED HARMLESS FROM ANY LOSS OF OR DAMAGE TO ANY PROPERTY, OR INJURY OR DEATH OF ANY PERSON WHOMSOEVER, PROXIMATELY CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OF CITY OR BY ANY ACT OR OMISSION FOR WHICH THE CITY IS LIABLE IN THE EXERCISE OF THE RIGHTS HEREIN GRANTED.

IT IS UNDERSTOOD THAT THE PERIOD OF USE OF SAID EASEMENT SHALL EXIST FOR A PERIOD OF NO MORE THAN SIX CONSECUTIVE MONTHS AND MAY COMMENCE AS EARLY AS FEBRUARY 1, 2011 OR THE DATE SET FORTH IN THE CITY'S WRITTEN NOTICE, WHICHEVER OCCURS LATER. IN THE EVENT SAID ACTUAL USE EXTENDS BEYOND THE PRESCRIBED PERIOD OF TIME AND SAID USE IS VERIFIED THROUGH THE CITY'S CONTRACTOR LOGS, THE CITY SHALL PAY THE OWNER AT THE RATE OF \$156.00 PER MONTH (TEMPORARY CONSTRUCTION EASEMENT "A") AND AT THE RATE OF \$339.00 PER MONTH (TEMPORARY CONSTRUCTION EASEMENT "B") PRORATED TO THE ACTUAL DATE SAID ACTUAL USE TERMINATES. THE OWNER WILL BE GIVEN AT LEAST A 30 DAY WRITTEN NOTICE BEFORE ANY CONSTRUCTION WORK MAY COMMENCE UNDER THIS TEMPORARY CONSTRUCTION EASEMENT. IT IS ALSO UNDERSTOOD THAT THE PROPERTY OWNER SHALL ENJOY FREE AND UNOBSTRUCTED USE OF THE TEMPORARY CONSTRUCTION AREA UNTIL SUCH TIME AS THE DATE SET FORTH IN THE WRITTEN NOTICE. THIS EASEMENT SHALL BECOME NULL AND VOID AND SHALL TERMINATE UPON COMPLETION OF SAID CONSTRUCTION AND IN ANY EVENT SHALL CEASE AND TERMINATE NOT LATER THAN DECEMBER 31, 2012.

CHARLES GRANT COTTINGHAM

PATRICIA G. COTTINGHAM

BY \_\_\_\_\_

BY \_\_\_\_\_

DATED \_\_\_\_\_

DATED \_\_\_\_\_