



# City of San Leandro

Meeting Date: December 1, 2014

## Staff Report

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**File Number:** 14-492 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.G.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Uchenna Udemezue  
Engineering & Transportation Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for a Resolution Authorizing the City Manager, by Order of the City Council Pursuant to San Leandro Municipal Code section 1-6-105, to Purchase 777 Alvarado Street (APN 075 0155 009 00) and to Appropriate \$300,000 from General Fund Reserves for the Purchase

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### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt the Resolution that, by its own order, authorizes the City Manager to purchase the property located at 777 Alvarado Street from the Oliver Partnership and to appropriate \$300,000 from General Fund Reserves for said purchase.

### BACKGROUND

In July 2000, the City of San Leandro's Redevelopment Agency (Agency) entered into a Disposition and Development Agreement with Creekside Association for the Agency owned properties at San Leandro Boulevard and Davis Street, now home of Creekside Office Plaza. The original project envisioned an environmental education center on one of the parcels to be operated by Friends of San Leandro Creek. During the negotiation process, the office park development expanded to include all available parcels. The Developer was required as part of the Disposition and Development Agreement to construct and maintain a creekwalk as part of the project. An alternative site, 777 Alvarado Street was identified for the environmental education center.

On May 1, 2001, Friends of San Leandro Creek entered into a Lease Agreement with the Oliver Partnership for 777 Alvarado Street. The lease included in the recitals section a guarantee from the City of San Leandro and the Redevelopment Agency for performance of the tenant. The terms of the agreement follow:

- 20-year lease (May 1, 2003 - April 30, 2023)
- \$2,000/month lease payment, adjusted annually by the CPI, plus property taxes
- Option to purchase on May 1, 2013 at fair market value

- The lease does not provide terms for early termination

On March 5, 2001, the Redevelopment Agency adopted a resolution whereby the City guaranteed the Friends of San Leandro Creek lease. Funding for the lease was provided by the Creekside Plaza developer who placed \$250,000 in a fund to pay the lease. It was originally envisioned that when this funding was depleted in 2013, either Alameda County or the Agency would purchase the property for Friends of San Leandro Creek.

In 2008-09 Friends of San Leandro Creek, working in conjunction with Alameda County Flood Control, were in serious negotiations with the Oliver Partnership for purchase of the site for \$550,000 to be paid by Alameda County. The purchase, however, was not finalized and the vision for the site as an environmental education center did not materialize.

When the dissolution of the Redevelopment Agency began in February 2012, the Lease Guarantee for Friends of San Leandro Creek was placed on the semi-annual Recognized Obligations Payment Schedule (ROPS).

### **Analysis**

In May 2012, with the knowledge that the \$250,000 set aside to pay the lease was approaching depletion, Friends of San Leandro Creek's Chairperson and City staff met with Mr. Steve Oliver to discuss the possibility of terminating the lease or having the Oliver Partnership donate the land to Friends of San Leandro Creek.

On May 17, 2013 the State Department of Finance objected to the lease guarantee on the Recognized Obligations Payment Schedule based on a determination that the Redevelopment Agency was not the sole Guarantor because the City was also a guarantor. Combined with Friends of San Leandro Creek's inability to make lease payments, this determination made the lease a responsibility of the City. The City has been paying the lease out of the General Fund since early 2014. As of March 2014, the projected remaining cost of the lease over the next nine years is approximately \$300,000.

777 Alvarado Street is envisioned in the Downtown Transit Oriented Development Strategy as part of a future residential development on the former World Savings parcels on Alvarado currently owned by Wells Fargo. Density of 65 - 100 units per acre is envisioned and 777 Alvarado Street, along with the fire training facility, could provide a linear park along the creek, similar to the Cherrywood linear park. Based on the cost of the remaining lease and the future value of the property, staff pursued the process of property acquisition.

The Lease Agreement provides a process whereby three qualified brokers (one selected by the City, one selected by the Oliver Partnership and one selected by both parties) would provide written opinions of the value of the property. The purchase price would be the median of the brokers' opinions of value. The brokers' opinions of the value of the property ranged from \$242,535 to \$375,500 with a median price of \$275,400.

The current projected cost breakdown for the acquisition of 777 Alvarado Street is as follows (all costs are approximate):

Purchase Price	\$275,400
<i>Anticipated Administrative Costs (not to exceed \$24,600):</i>	
Closing Costs	\$4,000
Broker's Commission	\$5,000
Phase I Report	\$5,000
<u>Staff Time</u>	<u>\$6,000</u>
TOTAL:	\$300,000

**Applicable General Plan Policies**

Pursuant to Government Code section 65402, the proposed purchase of the subject property by the City is in conformance with the General Plan.

**Environmental Review**

This action is exempt from the California Environmental Quality Act (CEQA). A Phase I Environmental review will be conducted before the purchase is finalized.

**Legal Analysis**

This action and the process by which the property will be purchased has been reviewed and approved by the City Attorney.

**Fiscal Impacts**

This purchase will not exceed \$300,000, which will be funded by an appropriation from the General Fund Economic Uncertainty Reserve to account 210-38-363. The cost of the purchase is equivalent to the value of the lease over the next ten years. The purchase of the property will enable the City to sell it in the future when development of the vacant properties on Alvarado Street occurs.

**Budget Authority**

This project will be funded by General Fund Economic Uncertainty Reserve of \$300,000 in account 210-38-363, for which the appropriation is requested.

**ATTACHMENT**

- Purchase and Sale Agreement

**PREPARED BY:** Kirsten Foley, Administrative Services Manager, Engineering and Transportation Department

**REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2014 (the “**Effective Date**”), by and between The Oliver Partnership, a California general partnership (“**Seller**”), and the City of San Leandro, a California charter city (“**City**”). Seller and City are collectively referred to herein as the “**Parties.**”

**RECITALS**

A. Seller is the owner of certain real property known as APN 075-0155-009-00 located at 777 Alvarado Street in the City of San Leandro (the “**Property**”), a depiction of which is set forth on Exhibit A attached hereto and a description of which is set forth on Exhibit B attached hereto (the “**Property**”).

B. As used in this Agreement, the term “Property” includes all of Seller’s right, title and interest in and to all tangible and intangible personal property used exclusively in connection with the Property, including but not limited to all entitlements, easements, mineral rights, oil and gas rights, water, water rights, air rights, development rights and other privileges appurtenant to the Property, including without limitation, all improvements located thereon, all rent, credits, refunds and reimbursements exclusively belonging to the Property.

C. City desires to purchase the Property pursuant to an option to purchase contained in a ground lease agreement between Seller and Friends of San Leandro Creek, dated May 29, 2001, a copy which is attached hereto as Exhibit C (the “**Ground Lease**”).

D. Friends of San Leandro Creek assigned its rights under the **Ground Lease** to City pursuant to \_\_\_\_\_, a copy which is attached hereto as Exhibit D.

E. City provided Seller with written notification that it was going to exercise its option to purchase pursuant to the Ground Lease on \_\_\_\_\_, a copy which is attached hereto as Exhibit E.

D. City requested and received three Broker Opinions of Value of the Property in order to ascertain its median value and effective purchase price, as required by the Ground Lease, and provided same information to Seller. A copy of the three Broker Opinions of Value are attached hereto as Exhibit F. The median of these appraised values is two hundred seventy five thousand and four hundred dollars (\$275,400.00). \_\_\_\_\_

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Parties, Seller and City hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to City, and City hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by City to Seller (the "**Purchase Price**") shall be two hundred seventy five thousand and four hundred dollars (\$275,400.00). The Purchase Price shall be paid in cash at Closing.

ESCROW. The Purchase Price shall be paid into an interest-bearing escrow account (the "**Escrow**") opened as Escrow # \_\_\_\_\_ with Chicago Title, 1646 N. California Blvd Suite 106 Walnut Creek, CA 94596; Attention: Laurie Balding-Smith, ESCROW OFFICER (the "**Escrow Holder**"), with interest accruing to the benefit of City. Escrow Holder shall perform all escrow and title services in connection with this Agreement. Within two (2) business days after the Effective Date, the Parties shall deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder shall be deemed the "Opening of Escrow" and Escrow Holder shall advise City and Seller of such date in writing. Notwithstanding the foregoing, City will not be subject to liability for failure to close the Escrow.

3. DUE DILIGENCE.

4.1 Review of Preliminary Documents and Physical Condition.

4.1.1 Due Diligence. City's obligation to purchase the Property is expressly conditioned on its approval, in its sole discretion, of the condition of the Property and all other matters concerning the Property, including without limitation economic, financial, and accounting matters relating to or affecting the Property or its value, and the physical and environmental condition of the Property. City shall have ninety (90) days from the Effective Date (the "**Contingency Date**") to complete physical inspections of the Property and due diligence related to the purchase of the Property. City will have until the Contingency Date to conduct such investigations as City may choose ("**Due Diligence**") to determine, in its sole discretion, whether this contingency is met. On or before the Contingency Date, City will deliver written notice to Seller accepting the Property, or terminating this Agreement. If City fails to give such notice on or before the Contingency Date, City will be deemed to have elected to terminate this Agreement.

4.1.2 Access to Property. As part of its Due Diligence, City may investigate economic, financial, and accounting matters relating to or affecting the Property or its value, and conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property. Seller will permit City and City's consultants, agents, engineers, inspectors, contractors, and employees ("**City's Representatives**") to have reasonable access to the Property during regular business hours for the purpose of performing such Due Diligence.

City will undertake the Due Diligence at its sole cost and expense. City shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of City and its agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and City shall provide Seller with evidence of such insurance coverage upon request from Seller.

4.1.3 Indemnification. City will indemnify, defend with counsel reasonably acceptable to Seller, and hold Seller and its agents from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by City, its agents, contractors and subcontractors in performing the inspections, testings or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any persons (including, without limitation, City's agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

4.2 Council Approval. City's obligation to purchase the Property is expressly conditioned on the City's City Council approving this transaction on or before the Contingency Date. City will notify Seller on or before the Contingency Date whether this condition has been satisfied.

4.3 Termination for Failure of a Contingency. If this Agreement is terminated for failure of Seller to meet a contingency set forth in this Article 4, then immediately on written notice from City, Escrow Holder must refund the Deposit to City, without offset for any charges or claims. Any cancellation fee or other costs of Escrow Holder or the Title Company resulting from this termination for failure of a contingency, will be borne equally by Seller and City, and each party must pay its own expenses.

#### 4. FEASIBILITY; PRE AND POST CLOSING MATTERS.

5.1 Condition of Title/Preliminary Title Report. Escrow Holder has delivered a Preliminary Title Report for the Property (the "**Preliminary Report**") to City. City has reviewed the Preliminary Report and approved all of the following exceptions to title, which shall be deemed "Permitted Exceptions": (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; and (c) the "**Permitted Exceptions**" listed on Exhibit G attached hereto. Seller shall deliver title to City at the Closing subject only to the Permitted Exceptions.

5.2 Environmental Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of Hazardous Substances has come to be located on or beneath the real property to provide written notice of same to the buyer of real property. Seller agrees to make all necessary disclosures required by law.

#### 5.3 Hazardous Materials; Environmental Requirements.

5.3.1 Hazardous Materials. As used herein, the term “Hazardous Materials” means any and all substances, chemicals, wastes, sewage, materials or emissions which are now or hereafter regulated, controlled, prohibited or otherwise affected by any local, state or federal statute, ordinance, code, rule, regulation, order, decree, permit or other law now or hereafter in effect including, without limitation, (a) any substance defined as a “Hazardous Material”, “hazardous material”, “hazardous waste”, “toxic substance”, or “air pollutant” in the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., as amended, the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq., or the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.; (b) any substance the presence of which, at the Property, causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of human beings; and (c) any substance the presence of which at the Property could constitute a trespass. In addition to the foregoing, to the extent not already included therein, the term “Hazardous Materials” also means (i) asbestos (including, without limitation, asbestos containing materials); (ii) flammable, explosive, infectious, carcinogenic, mutagenic, or radioactive materials; (iii) petroleum or any substance containing or consisting of petroleum hydrocarbons (including, without limitation, gasoline, diesel fuel, motor oil, waste oil, grease or any other fraction of crude oil); (iv) paints and solvents; (v) lead; (vi) cyanide; (vii) DDT; (viii) printing inks; (ix) acids; (x) pesticides; (xi) ammonium compounds; (xii) polychlorinated biphenyls; (xiii) radon and radon gas; and (xiv) electromagnetic or magnetic materials, substances or emissions.

5.3.2. Environmental Requirements. As used herein, the term “Environmental Requirements” means all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, authorities, departments, commissions, boards, bureaus, or instrumentalities of the United States, any state (including, without limitation, the State of California) and any political subdivisions thereof, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders, in any way relating to the protection or other regulation of human health or safety, natural resources or the environment, including, without limitation, all of the statutes, ordinances, codes, rules, regulations, orders, decrees, permits and other laws referred to above.

5.4 Environmental Indemnity. Seller agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to City), and hold City harmless from any claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean up of the Property), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys’ and paralegals’ fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the “Costs”) that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release, of any Hazardous Materials in, on or under the Property or in or into the air, soil, soil

gas, groundwater, or surface water at, on, about, around, above, under or within the Property, or any portion thereof. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Seller or any of its predecessors in interest and Seller hereby expressly waives any immunity to which Seller may otherwise be entitled under any industrial or worker's compensation laws. In the event the City suffers or incurs any Costs, Seller shall pay to City the total of all such Costs suffered or incurred by the City upon demand therefore by City. The indemnification provided by this paragraph shall include, without limitation, all loss or damage sustained by the City due to any Hazardous Materials: (a) that are present or suspected by a governmental agency having jurisdiction to be present in the Property or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Property (or any portion thereof) or to have emanated from the Property, or (b) that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Property (or any portion thereof) after the date of this Agreement as a result of Seller's or its predecessors' activities on the Property.

5.5 Indemnity to Survive Close of Escrow. The indemnity provided in Section 5.4 survives the termination of this Agreement upon the Close of Escrow and transfer of the Property to the City.

6. CLOSINGS AND PAYMENT OF PURCHASE PRICE.

6.1 Closing. The closing (the "**Closing**" or "**Close of Escrow**") shall occur no later than                     , 2014 ("**Closing Date**") or such other date, if any, that the parties agree to in writing.

6.2 City's Conditions to Closing. City's obligation to purchase the Property subject to the satisfaction of all of the following conditions or City's written waiver thereof (in City's sole discretion) on or before the Closing Date:

(a) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement.

(b) Seller's representations and warranties herein shall be true and correct in all material respects as of the Closing Date.

(c) The Title Company shall be irrevocably committed to issue a CLTA Title Policy to City, effective as of the Closing Date.

6.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to City are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) City shall have performed all obligations to be performed by City pursuant to this Agreement before Closing Date.



(b) City's representations and warranties set forth herein shall be true and correct in all material respects as of the Closing Date.

6.4 Deliveries at Closing. At the Closing, the Parties shall cause the following matters to occur:

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to City at Closing (i) a grant deed; (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "Non-Foreign Affidavit"); and (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b).

(b) Deliveries by City. City shall deposit into the Escrow the following: (i) the Purchase Price, and (ii) a fully executed and notarized certificate of acceptance of the grant deed.

(c) Closing. Upon Closing, Escrow Holder shall: (i) disburse to Seller the Purchase Price, less any liens on the Property, and Seller's share of any escrow fees, costs and expenses; (ii) deliver to City the Non-Foreign Affidavit and the California Certificate; and (iii) distribute to itself the payment of escrow fees and expenses required hereunder.

(d) Escrow Fees and Pro-Rations. City and Seller shall incur, in an equal amount to both Parties, all the costs for title transfer, including but not limited to, escrow fees, closing costs (including documentary transfer taxes), recording fees and the premium for any title insurance requested by City. Seller shall pay property taxes due and payable up to the date of Closing. City is not subject to the payment of property taxes.

## 7. REPRESENTATIONS, WARRANTIES AND COVENANTS.

7.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to City that the statements in this Article 7 are each true as of the Effective Date and shall be true and correct as of the Closing Date provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller shall so notify City in writing and City shall have at least three (3) business days thereafter to determine if City wishes to proceed with Closing. If City determines it does not wish to proceed, then the terms of Article 8 shall apply.

7.1.1 Seller is an individual owning the Property. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by City shall be a valid and binding agreement of Seller.

7.2 Seller has no actual knowledge that (i) the Property is in violation, or is currently, or has been, under investigation for violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Property, including, but not limited to,

soil and groundwater conditions; (ii) the Property has been subject to, or is within 2,000 feet of, a deposit of any Hazardous Material; (iii) Seller or, any third party has used, generated, manufactured, stored or disposed in, at, on, under or about the Property or transported to or from the Property any Hazardous Material, or that there has been any discharge, release or any migration of any Hazardous Material from, into, on, under or about the Property, or that there is now or has ever been on or in the Property underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment.

7.3 Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller shall not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

7.4 Seller is not aware of any violations of law or governmental regulations related to the Property, and has not received notices from governmental authorities pertaining to violations of law or governmental regulations with respect to the Property with which Seller has not fully complied or corrected. Seller is not in default with respect to any obligations or liabilities pertaining to the Property, nor to the best of Seller's knowledge are there any facts, circumstances, conditions or events that, but for notice or lapse of time or both, would constitute or result in any such default.

For purposes of this Agreement "to Seller's actual knowledge" or words of similar import shall mean the actual current knowledge of the Trustees of the Oliver Family Trust, after reasonable inquiry or investigation.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to the Close of Escrow.

7.5 City's Representations and Warranties. In addition to the representations, warranties and covenants of City contained in other sections of this Agreement, City hereby represents, warrants and covenants to Seller that the statements in this Section 7.5 are each true as of the Effective Date, and, if to City's actual knowledge any such statement becomes untrue prior to Closing, City shall so notify Seller in writing and Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) City is a California charter city. City has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by City, and upon delivery to and execution by Seller shall be a valid and binding agreement of City.

(b) City is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or

creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of City contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder.

8. CITY'S REMEDIES In the event of a breach or default under this Agreement by Seller, if such breach or default occurs prior to Close of Escrow, City reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to City any and all sums placed into the Escrow by City, and City shall be entitled to recover damages, in addition to any amounts recovered by City pursuant to Section 11.1 herein, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder.

9. BROKERS. Each party represents to the other that no real estate broker has been involved in the procurement or negotiation of this Agreement and that such party has not incurred any obligation to pay any real estate brokerage commission or finder's fee in connection with this transaction. Each party shall indemnify, hold harmless and defend the other from any and all claims, actions and liability for any breach of the preceding sentence, and any commission, finder's fee, or similar charges arising out of that party's conduct.

10. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor City may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

11. MISCELLANEOUS.

11.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal and/or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgement is rendered.

11.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it.

11.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

11.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

11.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

11.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof and cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

11.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

11.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To City: City of San Leandro  
835 E. 14th Street  
San Leandro, California 94577  
Fax: (510) 577-3294  
Attn: Kirsten Foley

To Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
Attn: \_\_\_\_\_

If to Escrow Holder: North American Title  
350 Main Street, Suite H  
Pleasanton, CA 94566  
Attn: Nathan Silva

Any such communication shall be deemed effective upon personal delivery two (2) days after transmitting the notice by a nationally recognized overnight delivery service or three (3) days after mailing in accordance with this section. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

11.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

11.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

11.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

11.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

11.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by

another party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

11.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

11.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

11.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

11.17 Confidentiality. The Parties hereto shall not disclose any of the terms of this Agreement (except to the extent as may be required by law or as required by the Title Company or to the officers, directors, partners and employees of the Parties hereto in the ordinary course of business) without the prior written consent of the other party. The Parties shall request that the documentary transfers taxes be affixed to the Deed after recordation of the Deed as provided in Section 11932 of the California Revenue and Taxation Code.

***SIGNATURES ON FOLLOWING PAGE***

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the date first set forth above.

Seller: \_\_\_\_\_

By: \_\_\_\_\_

City: CITY OF SAN LEANDRO, a California charter city

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: City Manager

ATTEST:

By: \_\_\_\_\_

Marian Handa, MMC  
City Clerk

REVIEWED AS TO FORM:

By: \_\_\_\_\_

Richard D. Pio Roda  
City Attorney

LIST OF EXHIBITS

Exhibit A	Depiction of Property
Exhibit B	Description of Property
Exhibit C	Ground Lease Agreement
Exhibit D	Assignment of Rights
Exhibit E	Notice of Option to Purchase
Exhibit F	Property Appraisals
Exhibit G	Permitted Exceptions

2319403.1





# City of San Leandro

Meeting Date: December 1, 2014

## Resolution - Council

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**File Number:** 14-493 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Uchenna Udemezue  
Engineering & Transportation Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION Authorizing the City Manager, by Order of the City Council Pursuant to San Leandro Municipal Code section 1-6-105, to Purchase 777 Alvarado Street (APN 075 0155 009 00) and to Appropriate \$300,000 from General Fund Reserves for the Purchase (provides for the purchase of 777 Alvarado Street and appropriation of \$300,000 from General Fund Reserves)

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### Recitals

WHEREAS, the City of San Leandro (the "City") is guarantor on a lease agreement for 777 Alvarado Street, APN 075 0155 009 00 (the "Property"); and

WHEREAS, the State Department of Finance objected to the lease guarantee on the Recognized Obligations Payment Schedule based on a determination that the Redevelopment Agency was not the sole Guarantor of the lease for 777 Alvarado Street, APN 075 0155 009 00; and

WHEREAS, the City does not wish to continue to incur costs of approximately \$300,000 over the nine remaining years of the lease; and

WHEREAS, in accordance with the option to purchase provided by the Lease Agreement, the City was provided three broker opinions of value, of which the median value was \$275,400; and

WHEREAS, the City desires to purchase the Property.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. The recitals above are hereby true and correct and incorporated herein.
2. Pursuant to City of San Leandro Municipal Code section 1-6-105, the City

Manager is hereby authorized and directed to negotiate the purchase of the Property and the drafting of a purchase and sale agreement for such sale, subject to approval of said agreement as to form by the City Attorney.

3. The City Council appropriates \$300,000 from General Fund Economic Uncertainty Reserve for this purchase.