City of Loma Linda Official Report

Karen Gaio Hansberger, Mayor
Floyd Petersen, Mayor pro tempore
Robert Christman, Councilmember
Stan Brauer, Councilmember
Robert Ziprick, Councilmember

COUNCIL AGENDA: July 13, 2004

TO: City Council

VIA: Dennis R. Halloway, City Manager

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer T.J.T.

SUBJECT: Approve the Purchase Agreement between the City of San Bernardino and the City of Loma Linda for the Purchase of the Bennett Well Site (A.P.N. 0281-161-047)

RECOMMENDATION

It is recommended that the City Council approve the purchase agreement between the City of Loma Linda and the City of San Bernardino for the purchase of the Bennett Well site (A.P.N. 0281-161-047).

BACKGROUND

The Bennett Well site is located on the Westside of Richardson Street, north of the I-10 freeway. This well was in production many years ago, drilled approximately in 1960, under the South San Bernardino County Water District ownership. This district was acquired by the City of San Bernardino in 1991. Unfortunately, the additional assets of the district exceeded the total pumping allotment allowed for San Bernardino. The City of Loma Linda is not in this capacity of allotment situation.

ANALYSIS

The Bennett Well site is in close proximity to the City's existing water system. The well site is 3,700 square feet in size, is flat and completely usable, in a general commercial zone. An independent appraiser has valued the parcel at $4,000. The improvements, well and structures, are valued at $18,820. The appraisal cost $2,180. The City of San Bernardino is offering the City of Loma Linda this property for $25,000 plus closing costs. The funds to purchase, re-equip and connect this well to the City of Loma Linda's system have been budgeted. At that point in time when demand requires additional capacity on a permanent basis a new well can be drilled at this site.

AGENDA ITEM 13

ENVIRONMENTAL

The uses of the site will not change, therefore, there is no environmental impact mitigation required.

FINANCIAL IMPACT

Account No.38-7200-9500 (purchase and improvement of the Bennett Well site) - $80,000.

PURCHASE AND SALE AGREEMENT FOR THE BENNETT WELL AND WELL SITE

THIS PURCHASE AND SALE AGREEMENT (this" Agreement") is entered into as of the 15th day of July 2003, by and between the City of San Bernardino Municipal Water Department ("Seller"), and the City of Loma Linda ("Buyer").

RECITALS

1. The Seller is the owner of a non-producing well and well site located west of Richardson Street and north of the Interstate 10 freeway, commonly referred to as the Bennett Well Site. The Seller has never utilized the Bennett Well Site, since acquiring it from the South San Bernardino County Water District. The well site (Property) is more particularly described in Exhibit "A" attached hereto.

2. Buyer is desirous of purchasing the Bennett Well Site and using the Bennett Well as a production facility.

NOW, THEREFORE, in consideration of the above-referenced facts, the mutual covenants of Buyer and Seller contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE I

AGREEMENT AND PURCHASE PRICE

1.1. Agreement. Seller agrees to sell the Property to Buyer, and Buyer agrees to buy the Property from Seller on the terms and conditions set forth in this Agreement.

1.2. Escrow Instructions and Opening of Escrow. An escrow shall be or shall be deemed to be opened within three (3) business days following execution of this Agreement by Buyer and Seller, with First American Title Company ("Escrow Company") as escrow holder. This Agreement shall constitute joint escrow instructions of Seller and Buyer to Escrow Company, and an executed copy of this Agreement shall be delivered to Escrow Company upon opening of escrow. After escrow is opened, Escrow Company shall prepare and the parties shall execute such additional escrow instructions consistent with the terms of this Agreement as may be reasonably necessary.

1.3. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Twenty-Five Thousand Dollars ($25,000.00).

1.4. Payment of the Purchase Price. The Purchase Price shall be paid by Buyer as follows:

(A) Immediately upon the execution of this Agreement by Seller and Buyer, Buyer shall cause to be deposited into escrow with Escrow Company as escrow holder, the

amount of One Thousand Dollars ($1,000.00) by cashier's check or wire transfer (the "Initial Deposit"). The Initial Deposit shall be invested by Escrow Company according to instructions from Buyer, with all interest being earned for the benefit of Buyer. If Buyer terminates its obligations under this Agreement as permitted pursuant to Sections 2.2, 3.1, 3.4, or 7.1, the Initial Deposit shall be refunded to Buyer; otherwise, the Initial Deposit shall be nonrefundable. Upon the Closing (as defined in Section 6.1), Buyer shall cause Escrow Company to deliver the entire amount of the Initial Deposit to Seller by wire transfer to an account designated by Seller, and the amount of the Initial Deposit shall be applied toward the Purchase Price.

(B) Buyer shall deposit the amount equal to the Purchase Price less the Initial Deposit, into escrow with Escrow Company as escrow holder, by wire transfer, at least one (1) business day prior to the Closing (as defined in Section 6.1) or by cashier's check during business hours at least three (3) business days before the Closing. The Purchase Price shall be paid to Seller by wire transfer from escrow to an account designated by Seller upon Closing.

1.5. Grant Deed. Seller's conveyance of the Property to Buyer shall be made by a grant deed to be prepared by First American Title prior to close of escrow for execution by the Seller.

1.6. Possession. Possession of the Property shall be delivered to Buyer upon the Closing.

ARTICLE II

TITLE

2.1. Permitted Exceptions. Buyer agrees to accept title to the Property subject to the following matters (collectively, the "Permitted Exceptions"):

(A) Any restrictions, reservations, or exceptions contained in the Grant Deed;

(B) Any matters created by or with the consent of Buyer or Buyer's employees or agents; and

(C) Those matters approved or deemed approved by Buyer pursuant to Section 2.2.

2.2. Approval of Title.

(A) Preliminary Title Report No. SSB-1177652 dated as of February 5, 2004, issued by First American Title Company (the "Title Company") purporting to disclose the condition of the title to the Property is attached hereto as Exhibit "C." Concurrent with the execution of this Agreement by Seller and Buyer, Seller shall provide to Buyer copies of all documents of record referred to therein (collectively, the "Title Report"). Buyer shall have until June 20, 2004 to complete its review of the Title Report and to approve or disapprove, by written notice to Seller, any exceptions to title except for items described in Section 2.1.

(B) If the Title Report is supplemented by a report disclosing an exception not previously disclosed in the Title Report, Buyer shall have three (3) days (or if less than three (3) days remain until the Closing, until one (1) day prior to the Closing) after receipt of such supplemental report and complete and legible copies of all documents of record referred to therein and not previously delivered to Buyer (collectively, a "Supplement") within which to approve or disapprove by written notice to Seller any exceptions to title disclosed in the Supplement and not previously disclosed in the Title Report, except for items described in Section 2.1. Buyer shall exercise its rights of disapproval under this Section 2.2 in good faith and shall not disapprove a matter disclosed in the Title Report or any Supplement (each such matter is hereinafter called an "Exception") that will not materially interfere with Buyer's development, use, enjoyment or disposition of the Property. If Buyer fails to disapprove an Exception in writing within the time periods specified above, the Exception shall be deemed conclusively and irrevocably to be approved by Buyer for all purposes.

(C) If Buyer disapproves an Exception, Buyer shall include in its notice to Seller a reasonably detailed description of Buyer's reasons for disapproval. On or before the date seven (7) days after Seller's receipt of Buyer's notice of disapproval of an Exception contained in the Title Report, and on or before three (3) days (or, if less than three (3) days remain until the Closing, prior to the Closing) after receipt of Buyer's notice of disapproval of an Exception contained in any Supplement, Seller shall inform Buyer in writing whether or not Seller will cause the removal of such disapproved Exception.

(D) If Seller informs Buyer that it will not cause the removal of a disapproved Exception, Buyer shall be entitled (i) at any time prior to June 22, 2004 (the "Approval Date") with respect to disapproved Exceptions contained in the Title Report which Seller has informed Buyer will not be removed, and (ii) within three (3) days (or, if less than three (3) days remain until the Closing, until the Closing) with respect to disapproved Exceptions contained in any Supplement which Seller has informed Buyer will not be removed, either to waive Buyer's approval, in which event such Exception shall be deemed conclusively and irrevocably to be approved by Buyer for all purposes, or terminate Buyer's obligations under this Agreement, in which event the provisions of Section 3.3 shall apply. If either such notice by Buyer is not timely delivered, Buyer shall be deemed to have conclusively and irrevocably approved such Exception(s) for all purposes. If Seller informs Buyer that Seller will cause the removal of a disapproved Exception, Seller shall have until the Closing to cause such Exception to be removed. If Seller agrees to remove a disapproved Exception and the disapproved Exception is not removed at or prior to Closing, Buyer's sole remedy for such default by Seller shall be to terminate its obligations under this Agreement, in which event the provisions of Section 3.3 shall apply.

2.3. Title Policy. Seller shall cause to be delivered to Buyer at the Closing written assurances from Title Company that it is prepared to issue to Buyer a CL T A owner's policy of title insurance in the amount of the Purchase Price, insuring Buyer as fee owner of the Property, subject only to Title Company's standard printed exclusions and exceptions and the Permitted Exceptions (the "Title Policy"). Buyer may at its sole cost and expense arrange with Title Company to have the Title Policy issued (i) as an ALTA Form B policy in place of a CLTA Policy, and (ii) with such endorsements as Buyer may desire; provided that neither of these arrangements shall constitute a condition to, or impede or delay, the Closing.

2.4. No Title Warranties. With the exception of the representations and warranties specifically set forth in Section 4.2, nothing in this Agreement shall be construed as a warranty or representation by Seller concerning Seller's title to the Property, and Seller makes no such warranty or representation. Buyer acknowledges and agrees that Buyer is relying solely upon the Title Report, any Supplement, the Title Policy, and Buyer's own investigations respecting the condition of title to the Property.

ARTICLE III

BUYER'S INSPECTION OF THE PROPERTY AND SELLER'S DISCLOSURES

3.1. Property Inspection and Document Review. Upon execution of this Agreement by Buyer and Seller, Buyer and its representatives, employees, contractors, and agents shall have the right, at Buyer's sole expense and risk (i) to physically inspect and investigate the Property and conduct any and all surveys, tests and studies of the Property and/or investigate the zoning, building and other requirements relating to or governing the Property as Buyer deems necessary, and (ii) to review, at Seller's offices during normal business hours, and make copies of, all documents or copies of documents pertaining to the environmental condition of the Property, including, but not limited to, all maps, surveys, tests, letters, records, contracts, soil, civil engineering and other studies, tests, plans and reports, which are in the possession or control of Seller. Buyer acknowledges that Seller will deliver to Buyer copies of the documents and materials listed in Section 3.4(a) upon opening of escrow, and Buyer agrees that the Approval Date shall not be extended, nor shall the Closing be impeded or delayed, as a result of Buyer's obtaining, failure to obtain or delay in obtaining any other documents or materials, provided that Seller has not committed a material default of its obligations set forth above in this Section 3.1. The information made available by Seller under this Agreement shall not be released or disclosed to any person other than Buyer's attorney, broker or lender, without the prior written consent of Seller unless and until this transaction has closed. Notwithstanding any other provision of this Agreement, Buyer shall have the absolute right to terminate this Agreement by written notice to Seller on or before the Approval Date, in which event the provisions of Section 3.3 shall apply. If, on or before the Approval Date, Buyer has not so terminated this Agreement, Buyer shall be deemed conclusively and irrevocably to have approved the condition of the Property and the findings of all inspections, investigations and reviews thereof, and Buyer shall no longer have the right to terminate this Agreement pursuant to this Section 3.1.

3.2. Rights of Entry and Access. For the purposes set forth in Section 3.1, Buyer and its representatives, agents, employees and contractors shall have the right to enter upon the Property while this Agreement is in force, provided that (i) Buyer shall restore any damage done to the Property as a result of any such entry or any inspections, investigations, reviews, tests, surveys or studies conducted in connection therewith, (ii) any such entry shall be made only after reasonable advance written notice to Seller by Buyer (but in no event less than 24 hours prior to such entry), at times reasonably acceptable to Seller and, at Seller's option, in the company of Seller's representative, and (iii) Buyer shall indemnify Seller against, defend and hold Seller and the Property free and harmless from any and all claims, demands, liabilities, costs, expenses, penalties, damages, losses and liens, including, without limitation, all actual costs and attorneys' fees reasonably incurred, arising out of or in connection with any such entry by Buyer or Buyer's

representatives, agents, employees or contractors. As a condition precedent to the rights of entry and access provided hereunder, Buyer shall obtain and keep in force until the Closing a commercial general liability insurance policy covering such entry and access. Such insurance policy shall provide coverage in an amount of not less than One Million Dollars ($1,000,000.00) for injury or death of any number of persons in anyone accident or occurrence and shall name Seller as an additional insured. At Seller's request, Buyer shall deliver to Seller certificates of insurance in such form as Seller may reasonably require showing Buyer's compliance with the aforesaid insurance requirements. In lieu of a commercial general liability insurance policy, Buyer may produce evidence of its self-insurance program through the SCJPIA.

3.3. Consequences of Termination of This Agreement.

(A) If this Agreement is terminated by Buyer pursuant to Sections 2.2, 3.1, 3.4, or 7.1, the Initial Deposit shall be returned to Buyer, less half of any escrow cancellation fees except as otherwise provided in Section 7.1, this Agreement shall terminate, and, subject to the provisions of Section 3 .3(b), neither party shall have any further rights against or obligations to the other (except for indemnification and any other rights and obligations not required to be performed prior to such termination) under this Agreement. If this Agreement otherwise terminates, the rights and obligations of Seller and Buyer shall be as set forth in Article VII.

(B) Promptly after any termination of this Agreement for whatever reason, Buyer shall deliver to Seller, at no cost to Seller, all copies and reproductions of all documents and data in Buyer's or its representatives', agents', employees' or contractors' possession or control pertaining to the Property, regardless of whether such items have been supplied by Seller or prepared or obtained by Buyer, its agents, employees or contractors, including, but not limited to, all land plans, maps, surveys, engineering studies, soils studies, geological studies and engineering information, all of which shall become the property of Seller.

3.4. Seller's Disclosures.

(A) Seller shall provide any information that it has related to the condition of the Property (collectively, the "Disclosure Documents"). Notwithstanding anything to the contrary contained in this Agreement, however, the disclosures in the Disclosure Documents shall not be construed as representations or warranties of any kind by Seller and are not a substitute for Buyer's own investigations and inspections of the Property. In the event of any conflict between the provisions of Section 4.1 and this Section 3.4, the provisions of Section 4.1 shall control.

(B) If Seller learns of any other conditions of the Property that the law would require to be disclosed to Buyer prior to the Closing, Seller shall notify Buyer in writing. Upon written notice to Seller within five (5) days from receipt of Seller's notice (or if less than five (5) days remain until the Closing, prior to the Closing), Buyer shall have the right to terminate this Agreement by written notice to Seller if Buyer reasonably concludes that the Property will be materially negatively affected, in which event the provisions of Section 3.3 shall apply.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1. Sale "As Is". The parties acknowledge that, except as specifically set forth in Section 4.2, Seller does not make, and has not made, any warranties or representations, either express or implied, as to any matter whatsoever, including but not limited to (i) the past, existing or future legal, physical or financial condition of the Property, (ii) compliance with any laws, codes, ordinances, rules, regulations, or requirements pertaining to the Property as it presently exists or as may be required for any future use, (iii) matters pertaining to the ownership, development, subdivision, maintenance, leasing, sale, zoning, permitted uses, access or availability of utilities or infrastructure with respect to the Property, or (iv) the fitness of the Property for any use, building or project, including but not limited to the suitability of the Bennett well for municipal water supply, the characteristics of the Property with respect to endangered species or habitats, the characterization of surrounding properties for either endangered species or habitats, and/or any restrictions, limitations, requirements or decisions of any governmental agency with respect to the Property or the surrounding area. Seller shall not be liable or bound in any manner for any verbal or written statements, documents, data, representations or other information pertaining to or constituting part of the Property furnished by Seller or any of its agents, employees or contractors or any other person. Buyer hereby acknowledges that Buyer is buying the Property" As Is" and "With All Faults" and is relying solely upon its own inspections, investigations, and reviews, and if circumstances, conditions or facts turn out to be in any way different from what Buyer believes or anticipates, Buyer shall not be relieved of any obligations under this Agreement, which shall remain in full force and effect, nor shall any such circumstances, conditions or facts give rise to any right of damages, rescission, cost recovery, or otherwise against Seller.

BUYER HEREIN ACKNOWLEDGES THAT SELLER PROVIDES NO ASSURANCES AS TO WHETHER THERE IS LEGAL ACCESS TO THE PROPERTY.

4.2. Representations and Warranties of Seller. Seller represents and warrants as of the date of this Agreement and as of the Closing as follows:

(A) Organization. Seller is a municipal corporation duly formed under the laws of the State of California with full power to enter into this Agreement and is duly qualified to transact business in California.

(B) Authority. The execution and delivery of this Agreement by Seller has been duly authorized and no other authorizations or approvals, whether of governmental bodies or otherwise, are necessary to enable Seller to enter into or to fully comply with the terms of this Agreement.

(C) Binding Effect of Documents. This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document,

understanding, agreement, order, writ, injunction, decree of any court in any litigation, or instrument to which Seller is a party or by which it is bound.

All warranties and representations of Seller set forth in this Agreement shall survive the Closing and shall not be merged into the Grant Deed.

4.3. Representations and Warranties of Buyer. Buyer represents and warrants as of the date of this Agreement and as of the Closing as follows:

(A) Organization. Buyer is a municipal corporation duly formed under the laws of the State of California with full power to enter into this Agreement and is duly qualified to transact business in California.

(B) Authority. The execution and delivery of this Agreement by Buyer has been duly authorized and no other authorizations or approvals, whether of governmental bodies or otherwise, are necessary to enable Buyer to enter into or to fully comply with the terms of this Agreement.

(C) Binding Effect of Documents. This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer and will constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. Neither this Agreement, nor anything provided to be done under this Agreement, violates or shall violate any contract, document, understanding, agreement, order, writ, injunction, decree of any court in any litigation, or instrument to which Buyer is a party or by which it is bound.

All warranties and representations of Buyer set forth in this Agreement shall survive the Closing and shall not be merged into the Grant Deed.

4.4. Indemnities.

(A) Buyer hereby indemnifies and holds harmless Seller and its property and assets from all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and court costs reasonably incurred) incurred or suffered by Seller as the result of the breach by Buyer of any of the representations or warranties contained in this Agreement.

(B) Seller hereby indemnifies and holds harmless Buyer and its property and assets from all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and court costs reasonably incurred) incurred or suffered by Buyer as the result of the breach by Seller of any of the representations or warranties contained in this Agreement.

4.5. Limitation on Enforcement of Rights. In the event either party has actual knowledge of any breach of any representation or warranty of the other party prior to the Closing and fails to notify that party thereof in writing prior to the Closing, the party with knowledge of such breach shall be deemed to have waived any such breach and shall thereafter be estopped from bringing any action with respect to such breach.

ARTICLE V

ADDITIONAL AGREEMENTS OF BUYER AND SELLER

5.1. Environmental Disclosures and Indemnities.

(A) Definitions. For purposes of this Section 5.1, the following definitions apply:

(i) "Environmental Claim(s)" means any and all claims, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements (A) relating to the Property, the operations or activities thereon or the use or occupancy thereof, and (B) arising out of any (1) action by a governmental authority with jurisdiction over the Property (a "Governmental Authority") for enforcement (including, without limitation, an action for penalties and/or injunctive relief), or for cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law (each, an "Environmental Order"); or (2) action resulting from (y) Hazardous Materials or (z) a violation of Environmental Laws brought by a third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

(ii) "Environmental Law(s)" means any and all federal, state and local laws, regulations, ordinances, codes and policies, and any and all judicial or administrative interpretations thereof by Governmental Authorities, as now in effect or hereinafter amended or enacted, relating to pollution or protection of the environment, of natural resources or of public health and safety and relating to the Property, including, without limitation, those relating to releases or threatened releases of Hazardous Materials into the environment and any and all Environmental Orders.

(iii) "Hazardous Material(s)" means any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any Environmental Law, including, without limitation, any (A) substance defined as a "hazardous substance," "hazardous material," "hazardous waste," or "toxic substance" in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA "), 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., all as amended to date and as amended hereafter; and (B) hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical or compound described in any other federal, state or local statute, ordinance, code, rule, regulation or other law now or at any time hereafter in effect regulating, relating to, or imposing liability or standards *of* conduct concerning, any hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical or compound. As used herein, the term Hazardous Material(s) also means and includes, without limitation, gasoline, diesel, oil, motor oil, waste oil, petroleum (including, without limitation, crude oil or any component thereof) and petroleum- based products.

(B) Seller's Environmental Disclosures.

(i) Seller represents to Buyer that the only information or documents it has in its possession, custody or control with respect *to* any Hazardous Materials presently existing in, on or about the Property, or that previously existed in, on or about the Property, is contained in the Disclosure Documents, if any.

(ii) Seller has provided the Disclosure Documents, if any, to Buyer prior to the date of this Agreement.

(C) Buyer's Environmental Indemnity. Buyer hereby agrees to indemnify and to hold harmless Seller and its property and assets from all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and court costs) incurred or suffered by Seller as the result of Environmental Claims (including, without limitation, any Environmental Order), whenever asserted, attributable to the presence, at the time of Closing, of any Hazardous Materials in, on, under or about the Property, including in soils, groundwater and surface water and including Hazardous Materials migrating onto the Property or migrating from the Property onto the property of others. In addition to the foregoing and even though no Environmental Order has issued and no Environmental Claim has been asserted, Buyer agrees to perform any and all remediation work with respect to the Property.

5.2. Eminent Domain. In the event of any threatened, contemplated, commenced or consummated condemnation or other taking of all or any material portion of the Property, Seller shall assign to Buyer at the Closing, all of Seller's right, title and interest in and to any condemnation award, and Buyer shall have the sole right thereafter to negotiate and otherwise deal with the condemning authority in respect of such matter. No such threatened, contemplated, commenced or consummated condemnation or other taking shall give Buyer any right to terminate this Agreement or reduce the Purchase Price or otherwise amend this Agreement in any manner whatsoever. ...

5.3. No Assignment by Buyer. Notwithstanding anything to the contrary set forth in this Agreement, Buyer shall have no right to transfer or assign any of its rights, or obligations under this Agreement voluntarily, by operation of law or otherwise; provided, however, Buyer shall have the right to assign to an Affiliate. An "Affiliate" shall mean, with respect to any entity, any natural person or firm, corporation, partnership, association, trust or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the Buyer; a natural person or entity which has an entity as an Affiliate under the foregoing shall also be deemed to be an Affiliate of such entity. For purposes hereof, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract, or otherwise.

5.4. RELEASE. EXCEPT FOR MATERIAL BREACH BY SELLER OF SUCH, IF ANY, SPECIFIC AND LIMITED WARRANTIES OF SELLER AS MAY BE CONTAINED IN THIS AGREEMENT, BUYER AGREES TO FULLY AND IRREVOCABLY RELEASE SELLER FROM ANY AND ALL CLAIMS THAT BUYER MAY NOW HAVE OR MAY HEREAFTER ACQUIRE AGAINST SELLER FOR ANY COST, LOSS, LIABILITY,

DAMAGE, EXPENSE, MATTER OR THING RELATING TO THE PROPERTY OR ANY INFORMATION OR DOCUMENTATION WHATSOEVER FURNISHED OR ALLEGED TO HAVE BEEN FURNISHED BY SELLER RELATING TO THE PROPERTY. THIS RELEASE INCLUDES CLAIMS WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY AS WELL AS CLAIMS ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED ("CERCAL"), AND RESOURCE CONSERVATION AND RECOVERY ACT ("CAR"), COMPANION STATE LAWS AND STATE AND FEDERAL COMMON LAW. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE TO SELLER. BUYER SPECIFICALLY WAIVES THE PROVISION OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

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

IN THIS CONNECTION AND TO THE EXTENT PERMITTED BY LAW, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS, WHICH REPRESENTATION AND WARRANTY SHALL SURVIVE THE CLOSING AND NOT BE MERGED WITH THE DEED, THAT BUYER REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES RELATING TO THE PROPERTY WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND BUYER FURTHER AGREES, REPRESENTS AND WARRANTS, WHICH REPRESENTATION AND WARRANTY SHALL SURVIVE THE CLOSING AND NOT BE MERGED WITH THE DEED, THAT THE RELEASES PROVIDED ~ THIS SECTION HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT BUYER, NEVERTHELESS, HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT SELLER FORM ANY SUCH UNKNOWN CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES.

_____

BUYER'S INITIALS

ARTICLE VI

CLOSING

6.1. Closing. Provided that each condition to closing described in Section 6.6 has been satisfied (or waived by the party for whose benefit the condition exists), the parties shall close the transaction contemplated by this Agreement by delivering the items specified in Sections 6.2 and 6.3 (all of which deliveries shall be deemed to occur simultaneously)

(collectively, the "Closing") on _____, 2004, unless the date is extended pursuant to this Agreement or by other written agreement signed by Seller and Buyer.

6.2. Buyer's Obligations. Not later than one (1) business day prior to the Closing, Buyer shall cause to be delivered all of the following:

(A) To Escrow Company, the balance of the Purchase Price, as set forth in Section 1.4(b);

(B) To Escrow Company, a duly executed Preliminary Change of Ownership form;

(C) To Escrow Company, all costs and fees required to be paid by Buyer pursuant to Sections 6.4 and 6.5 below for immediate distribution to the appropriate third parties; and

(D) Such other instruments and documents as may be reasonably necessary of Buyer to allow the Closing to occur.

6.3. Seller's Obligations. Upon the Closing, Seller shall cause to be delivered all of the following:

(A) To Escrow Company, the Grant Deed properly executed and acknowledged by Seller and in recordable form, which shall be delivered to Escrow Company *for* immediate recordation;

(B) To Escrow Company, who shall be deemed the "person responsible for closing the transaction" for purposes of complying with Section 6045 of the Internal Revenue Code, the information necessary to file any information returns with the Internal Revenue Service, as may be required by law;

(C) To Escrow Company, all costs and fees required to be paid by Seller pursuant to Sections 6.4 and 6.5 below for immediate distribution to the appropriate third parties; and

(D) Such other documents and instruments as may be reasonably necessary of Seller to allow the Closing to occur.

6.4. Prorations. All non-delinquent real property taxes for the Property shall be prorated between Buyer and Seller as of the Closing. Any supplemental tax bill issued after the Closing shall be paid by Buyer. Any and all installments currently due on assessments or bonds encumbering the Property shall be prorated between Buyer and Seller as of the Closing; provided, however, Buyer shall assume all future obligations on any such assessments or bonds and Buyer specifically acknowledges that the Property may be subject to future assessments in connection with the development of the Property and other real property in the vicinity thereof. All prorations pursuant to this Section 6.4 shall be based on days actually elapsed and a 360-day

period (or 30-day month). Any refund of real property taxes paid by Seller, based upon the reduction of the assessed valuation of the Property, shall be the property of Seller; and, in the event Buyer is made payee on any such check, draft or warrant in payment of such refund, Buyer shall promptly endorse and deliver such check, draft or warrant to the order of Seller.

6.5. Closing Costs.

Buyer shall pay:

(A) Escrow Company's escrow fee;

(B) the premium for a standard form CL T A owner's policy of title insurance in the amount of the Purchase Price if Buyer elects to obtain same pursuant to Section 2.3, and the cost of all title endorsements desired by Buyer;

(C) costs of recording the Grant Deed, if any;

(D) all documentary transfer taxes; and

(E) the cost of fulfilling Buyer's other obligations under this Agreement.

6.6. Conditions to Closing. The Closing shall not occur unless and until:

(A) Buyer and Seller have deposited with Escrow Company all sums and documents required to be deposited pursuant to Sections 6.2 and 6.3;

(B) The representations and warranties of Seller and Buyer pursuant to Article IV shall be true and complete in all material respects;

(C) Seller and Buyer shall not be otherwise in default under this Agreement in any material respect (in the event of such default, the provisions of Section 7.1 shall apply);

(D) Seller and Buyer shall have executed all documents required by this Agreement to be deposited with Escrow Company and to which each is a party; and

(E) Buyer shall be deemed to have approved the title to the Property pursuant to Section 2.2 and the condition of the Property pursuant to Section 3.1.

In the event that any condition to the Closing referred to in this Section is neither satisfied within the time limits specified nor waived in writing by the party for whose benefit the condition has been created, such condition shall be deemed to have failed, and the rights and obligations of Seller and Buyer shall be as set forth in Article VII.

6.7. Recordation of Documents and Delivery of Funds. Upon receipt of the funds and instruments described in Sections 6.2 and 6.3 and upon the satisfaction or waiver of the conditions to Closing referred to in Section 6.6, Escrow Company shall cause the Closing to occur. All sums to be disbursed by Escrow Company shall be by check of Escrow Company. To close escrow, Escrow Company is instructed to take the following actions in the following order:

(A) Date the Deed, and any other undated documents deposited in escrow with the date of the Closing;

(B) Deliver the Purchase Price to Seller minus the amount of the Environmental Credit described in Section 5.1(c);

(C) Deliver the amount of the Environmental Credit to Buyer; (d) Record the Deed;

(E) Deliver the Title Policy to Buyer;

(F) Deliver a conformed copy of the Deed to Buyer; and (g) Deliver the non-foreign status certificate to Buyer.

ARTICLE VII

REMEDIES

7.1. Remedies. If Seller commits any default under this Agreement, then, subject to any specific provisions to the contrary contained in this Agreement, Buyer may, at Buyer's option, terminate this Agreement and/or pursue any other rights or remedies that Buyer may have under applicable law; provided, however, prior to Buyer's exercise of any remedy of specific performance, including without limitation the filing of a notice of lis pendens in connection with any action to compel Seller to convey the Property or any interest therein to Buyer, Buyer shall deliver all of the items necessary to close the transaction contemplated by this Agreement in accordance with Section 6.2. If Buyer exercises or attempts to exercise any such remedy of specific performance without first so delivering such items, Buyer shall be deemed to have waived its right to specific performance and Buyer's sole and exclusive remedy hereunder shall be a monetary remedy for damages. If Buyer commits any default under this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement (in which event Buyer shall have no right, title or interest in or to the Property or any part thereof whatsoever) and to retain the proceeds of the Initial Deposit plus any interest accrued thereon in accordance with Sections 1.3 and 7.2. If either party terminates this transaction because of the other party's default hereunder, the defaulting party shall pay all escrow costs billed by the Escrow Company.

7.2. LIQUIDATED DAMAGES. IF BUYER FAILS TO COMPLETE THE TRANSACTION SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT SELLER SHALL RETAIN THE INITIAL DEPOSIT OF ONE THOUSAND DOLLARS (1,000.000), PLUS ANY INTEREST ACCRUED THEREON, AS LIQUIDATED DAMAGES, WHICH THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT, PROVIDED HOWEVER, IF BUYER WRONGFULLY REFUSES TO CAUSE ESCROW COMPANY TO CANCEL THE ESCROW, SELLER SHALL ALSO BE ENTITLED TO ALL COSTS AND

EXPENSES, INCLUDING ACTUAL ATTORNEYS' FEES INCURRED BY SELLER WITH RESPECT TO THOSE CONSEQUENTIAL DAMAGES, IF ANY, WHICH MAY BE INCURRED BY SELLER, BY REASON OF THE CLOUD ON TITLE TO THE PROPERTY WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT. IF BUYER FAILS TO DELIVER SUCH SUMS TO SELLER AS HERETOFORE PROVIDED, INTEREST SHALL ACCRUE THEREON AT THE RATE OF 10% PER ANNUM FROM THE DATE OF SELLER'S WRITTEN NOTICE UNTIL PAYMENT THEREOF. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE

7.3. ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THIS PROVISION SHALL NOT LIMIT OR BE IN SUBSTITUTION FOR BUYER'S LIABILITY AND/OR SELLER'S REMEDIES FOR ANY INDEMNIFICATION OBLIGATIONS OF BUYER HEREUNDER. "

_____ _____

Buyer's Initials Seller's Initials

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1. Brokerage Commissions. Buyer and Seller each agree and represent that no broker or finder has been or will be employed in connection with the transactions contemplated by this Agreement. Buyer hereby agrees to indemnify, hold harmless and defend Seller from and against any claim or liability, including without limitation Seller's actual attorneys' fees, disbursements and costs reasonably incurred, arising from any broker claiming to represent Buyer in connection with the transactions contemplated by this Agreement. In the event of any other claim for broker's, agent's or finder's fees or commissions in connection with the negotiation, execution or consummation of the transaction contemplated by this Agreement, the party upon whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim and liability, including without limitation its actual attorneys' fees, disbursements and costs reasonably incurred. It is agreed and understood that the Broker shall not be entitled to a commission if the sale of the Property is not consummated.

8.2. Notices. All notices, demands, approvals, consents, or other communications required or desired to be given under this Agreement in writing shall be mailed, delivered or transmitted to the party involved at the address indicated below:

If to Seller: Mr. Bernard C. Kersey, General Manager
City of San Bernardino Municipal Water Department
P. O. Box 710
San Bernardino, CA 92402
Tel # (909) 384-5091
Fax # (909) 384-5215

If to Buyer: Mr. Jarb Thaipejr
City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354
Tel # (909) 799-2870
Fax # (909) 796-0131

If to Escrow Company: First American Title Insurance Company
323 Court Street
P. O. Box 6327
San Bernardino, CA 92412
Tel # (909) 889-0311
Fax # (909)

Each such notice, demand, approval, consent, or other communication shall be deemed effective and given (i) upon receipt, if personally delivered, (ii) upon being transmitted, if sent by telegram, telex or telecopy, if a copy of the notice is also sent by United States Certified Mail and provided receipt is confirmed by a transmission report or otherwise, (iii) two (2) business days after deposit in the United States mail in Orange County, certified and postage prepaid, properly addressed to the party to be served, or (iv) upon receipt if sent in any other way. Any party hereto may from time to time, by written notice to the other, designate a different address than that set forth above for the purposes of notice, provided, however, that no notice of a change of address shall be effective until actual receipt of the notice.

8.3. Modification. This Agreement may not be modified, renewed, extended, or amended except by a written agreement signed by Seller and Buyer or their respective successors in interest and expressly stating that it is a modification, renewal, extension or amendment of this Agreement, as the case may be.

8.4. Attorneys' Fees. In any action commenced to enforce or interpret, or for breach of, any provision of this Agreement, or otherwise arising in connection with this Agreement or with any of the Property, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief and remedies to which the prevailing party may be entitled, its actual costs and expenses reasonably incurred, including without limitation attorneys' fees, court costs and disbursements. The "prevailing party" shall be determined by the trier of fact.

8.5. Successors and Assigns. Without limiting the restrictions on transfer set forth in this Agreement, every provision of this Agreement shall be binding upon, and shall inure to the benefit of, the legal representatives, heirs, successors and assigns of the parties. Buyer may not assign or transfer its rights or delegate its duties under this Agreement without the prior written consent of Seller, and any attempted assignment, transfer or delegation by Buyer shall be null and void and shall constitute a material breach by Buyer of this Agreement.

8.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

8.7. Section Headings. The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof. All uses of the words "Article(s)" and "Section(s)" in this Agreement are references to articles and sections of this Agreement, unless otherwise specified.

8.8. No Recorded Memorandum. Neither this Agreement nor any memorandum hereof or reference hereto, shall be filed in any place of public record. Failure of Buyer to comply with this Section 8.8 shall be a material default by Buyer under this Agreement and, at the election of Seller, shall automatically and immediately terminate all of Buyer's rights under this Agreement, and thereafter Buyer shall not have any right, title, or interest in or to the Property whatsoever.

8.9. Incorporation of Exhibits. All Exhibits attached to, and to which reference is made in this Agreement are incorporated into, and shall be deemed a part of, this Agreement. In the event of any inconsistency between the text of this Agreement and the Exhibits hereto, the text of this Agreement shall control.

8.10. Severability. If any provision or portion of this Agreement shall become illegal, unenforceable, invalid, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, unenforceable, invalid, null or void or against public policy, the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

8.11. Survival of Agreement. To the extent not required to be performed before the ; Closing or other termination of this Agreement, the obligations, covenants and agreements of :..: Seller and Buyer pursuant to this Agreement shall survive the Closing or other termination of this agreement.

8.12. Entire Agreement. This Agreement is the entire integrated agreement of Buyer and Seller with respect to the Property, containing all of the terms and conditions to which Seller and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, if any, of Seller and Buyer respecting the Property.

8.13. Time of Essence. Time is of the essence in this Agreement and each and every provision of this Agreement.

8.14. Objective Construction. This Agreement reflects the negotiated agreement of the parties. Accordingly, this Agreement shall be construed as if both parties jointly prepared this Agreement and no presumption against one party or the other shall govern the interpretation or construction of any of the terms of this Agreement.

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

8.16. Indemnified Parties. Any indemnification contained in this Agreement for the benefit of a party shall extend to the officers, directors, employees, and agents of the party and to the parent company or affiliates of the party and shall survive the Closing, recordation of the Deed or termination of this Agreement.

8.17. No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

8.18. Waivers. A waiver or breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of time for performance of any other obligation or act.

8.19. Joint and Several Liability. If Buyer consists of more than one person, each such person shall be jointly and severally liable.

8.20. Effectiveness and Acceptance. This Agreement shall not constitute or be deemed a contract between Buyer and Seller until and unless it is fully executed by both Buyer and Seller. Notwithstanding anything to the contrary contained in this Agreement, the acceptance of any offer made by execution of this Agreement shall not be deemed effective until received by the offeror.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

"SELLER"
CITY OF SAN BERNARDINO

By: _____
Judith Valles, Mayor

ATTEST:

_____
Rachel Clark, City Clerk

BOARD OF WATER COMMISSIONERS
CITY OF SAN BERNARDINO

By: _____
B. Warren Cocke, President

By: _____
Stacey R. Aldstadt, Secretary

Approved as to form:

_____
James F. Penman
City Attorney

"BUYER"
CITY OF LOMA LINDA
a California Municipal Corporation

BY:_____
Karen Gaio Hansberger, Mayor

ATTEST:

_____

EXHIBIT " A"

LEGAL DESCRIPTION OF PROPERTY

(SEE ATTACHED EXHIBIT "A")