Meeting Date: 7/24/2007

ACTION	TYPE OF ITEM
☐ Approved Recommendation	x Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Cynthia Daniels, AICP Agenda Item No. I-11

Reviewed By: City Manager City Attorney Gillig Finance SW Other NA

DATE: July 12, 2007

TO: City Council

FROM: Lou Balderrama, City Engineer
Public Works Department

SUBJECT: **Acquisition Settlement Agreement with Jose Angulo dba Anita's Restaurant at 3015 Santa Clara Avenue for the Rice Ave./Santa Clara Ave. Interchange Improvements on Highway 101**

RECOMMENDATION

That City Council approve and authorize the Mayor to execute the agreement with Jose Angulo doing business as (dba) Anita's Restaurant in the amount of $24,250 for acquisition of property located at 3015 Santa Clara Avenue for the Rice Avenue/Santa Clara Avenue interchange improvements on U.S. Highway 101 (Agreement No. A-6905).

DISCUSSION

The Project. On February 26, 2002 the City Council adopted a mitigated negative declaration and mitigation monitoring program, and approved the project to improve the Rice Avenue/Santa Clara Avenue interchange on U.S. Highway 101. The improvements include reconstruction and widening of the existing Rice Avenue/Santa Clara overcrossing from two to six through lanes (plus two southbound left turn lanes), reconfiguration of the existing U.S. 101 on- and off-ramps, and the realignment of Ventura Boulevard. The City made a written offer to the owner for just compensation based on professional appraisals of fair market value and business goodwill in compliance with federal and State laws, rules, and regulations. The property is needed for the construction of the interchange. The City Council adopted Resolution 12,950 on September 27, 2005 to authorize condemnation of the property. The court order for prejudgment possession gave the City possession of the property on May 1, 2007.

The Property. Anita's Restaurant was the tenant on the site. The business relocated off the City-owned property in May 2007. The settlement includes payment for improvements pertaining to the realty and relocation benefits. The City deposited with the Office of the State Treasurer the amount of $33,900 for the improvements pertaining to the realty in December 2006. Anita's Restaurant and the property owners agreed to divide the funds identified for the improvements pertaining to the realty.

FINANCIAL IMPACT

The cost of the settlement agreement is $24,250. The funds deposited with the State Treasurer in the amount of $33,900 will be released to the former property owners as part of the negotiated settlement approved by the City Council on July 10, 2007. There are sufficient funds in Account No. 308-9718-871-8605 Project No. 873114 to fund the request.

LB:CD

Attachment #1 - Agreement No. A-6905

Note: The Agreement No. A-6905 has been provided to the City Council. Copies are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on Friday.

Agreement No. A-6905

ACQUISITION SETTLEMENT AGREEMENT
Anita's Restaurant

This Agreement ("Agreement") is made on_____by and between the **City of Oxnard** ("City"), **and Jose Angulo dba Anita's Restaurant** ("Tenant"). City and Tenant are hereinafter sometimes referred to collectively as the "Parties".

RECITALS

A. Tenant operates a business commonly known as **Anita's Restaurant**, and is the occupant of real property and improvements located at **3015 Santa Clara Ave., Oxnard, CA 93030**, more specifically described in Exhibit "A", and EXHIBIT "1-A", Legal Descriptions, attached hereto and made a part hereof, which shall be referred to herein as the "Property". Tenant is not the owner of the real property. However, Tenant is the owner of certain personal property (movable and/or immovable) currently located on the Property.

B. The Property is located within the Project Area for the Rice Avenue Interchange Project and the City intends to acquire the Property for a public use.

C. The City has received a valid order of possession for the property and has secured and caused a writ of assistance to be served upon Tenant.

D. The Parties desire to establish their respective rights and obligations with regard to the acquisition of the Property by City upon the terms and conditions set forth below.

NOW, THEREFORE, Parties hereto agree as follows:

1. Consideration

(a) City agrees to pay to Tenant:

(i) The sum of Four Thousand Two Hundred Fifty Dollars ($4,250.00) as compensation for improvements pertaining to the realty. This amount was withdrawn from funds

deposited with the Office of the State Treasurer by Tenant's landlord and has been paid to Tenant by landlord pursuant to an agreement between Tenant and Tenant's landlord.

(ii) The sum of Twenty Thousand Dollars ($20,000) as an "in lieu" payment pursuant to the California Relocation Assistance Law, California Government Code § 7262(c). This amount shall be paid to Tenant by the City by a check payable to Law Offices of Steve Pell and Jose Angulo and delivered to Law Offices of Steve Pell, 2633 Loma Vista Road, Ventura, CA 93003, Attn: Michael Grennier.

(b) Tenant agrees that receipt of full payment of the consideration noted in Paragraph 1 (a) above will constitute full satisfaction of any and all of City's obligations to Tenant, including without limitation any obligations for loss of business goodwill, leasehold interest, compensation for personal property, Improvements Pertaining to Realty as described in Exhibit "B", relocation benefits pursuant to the California Relocation Assistance Law, Government Code §§ 7260 *et seq.*, as amended, and regulations promulgated pursuant thereto, the Uniform Relocation Assistance Act, 42 U.S.C. §§ 4601 *et seq.*, as amended, and regulations promulgated pursuant thtereto, and/or damages of any nature.

2. Vacation of the Property

(a) Tenant shall immediately vacate the Property located at 3015 E. Ventura Boulevard.

(b) As of the Vacation Date, Tenant shall have removed all its removable personal property, trade fixtures, furniture and equipment from the Property except for those items described in Exhibit "B" attached to hereto and made a part hereof.

(b) Upon the Vacation Date, Tenant hereby transfers any right, title and interest, if any, in the Property, the Lease and the fixtures and equipment described in Exhibit "B" to City, and warrants all to be free and clear from any liens or encumbrances, and free of any refrigerants or any other toxic or hazardous materials, which shall have been removed and disposed of in accordance with applicable regulations.

3. Waiver of Rents

Provided Tenant vacates the property as provided in Paragraph 1 (a), City agrees to waive all rent on the Property commonly described as 3015 E. Ventura Boulevard, from the date of possession of the property until the period of time coincident with Tenant's vacation of said property.

4. Conveyance of Interest in Real Property and Improvements Pertaining to Realty

a) Tenant hereby warrants and certifies that no document has been signed by or on behalf of the Tenant for the purpose of creating any lien, encumbrance or security interest in any of the items of Improvements Pertaining to Realty included in this Agreement, and that the Tenant does not know of any claim of lien or encumbrance therein, EXCEPT: a) trust deeds secured by said items, duly recorded; b) personal property taxes.

b) Tenant agrees to execute a Quitclaim Deed, (if one is presented by City), within 30 days after both of the Parties have executed this Agreement, in favor of City, relinquishing, releasing and forever quitclaiming all right, title and interest in and to the real property described in Exhibits "A", and "1-A", attached hereto and made a part hereof as well as quitclaiming all interest in any Improvements Pertaining to said Realty in and on the property commonly referred to as 3015 E. Ventura Blvd., Oxnard, CA 93030. Recordation of any documents through this transaction is authorized by Tenant, if necessary and proper.

5. Disclaimer

The City has filed an eminent domain action to acquire the interests of Tenant in the Property, *City of Oxnard v. Kanji, et al.*, Ventura County Superior Court Case No. CIV237708. Concurrently with payment to Tenant of the consideration due pursuant to paragraph 1 of this Agreement, Tenant shall execute and deliver to the City a disclaimer of interest in the form provided by the City. The City shall file the disclaimer with the court. Tenant agrees that it has no right to assert a claim for attorneys fees or costs in the eminent domain action. In addition, Tenant will not object to any withdrawals of funds on deposit with the State Treasurer in connection with the eminent domain case after the City has paid the consideration due pursuant to paragraph 1 of this Agreement.

6. Release

(a) Tenant for itself, its agents, assigns and related entities, fully releases, acquits and discharges City, and the officers, directors, employees, attorneys, accountants, other professionals, insurers and agents of City (collectively "Agents") and all entities related to City, from all rights, claims, demands, actions or causes of action which Tenant now has or may have against City arising from the acquisition of the Property, the Lease, or otherwise, including, but not limited to, any claim to relocation assistance, relocation benefits or compensation for property or goodwill from the City.

(b) This release is intended as a full and complete release and discharge of any and all such claims that Tenant may or might have against City and its related entities arising from the facts and circumstances described above in this Agreement. In making this release, Tenant intends to release City, its related entities and agents from any liability of any nature whatsoever for any claim or injury or for damages or equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to the party possessing the claim. Tenant expressly waives all rights under Section 1542 of the Civil Code of the State of California, which Tenant understands 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.*

(c) Tenant acknowledges that it may hereafter discover facts or law different from or in addition to those which it now believes to be true with respect to the release of claims. Tenant agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts or law or any part's discovery thereof. Tenant shall not be entitled to any relief in connection therewith, including, but not limited to any damages or any right or claim to set aside or rescind this Agreement.

(d) No party nor any agents nor any related entities have made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party expressly states it does not rely upon any statement, representation or promise of any other party or any party's agent or related entities in executing this Agreement, except as is expressly stated in this Agreement. Each party to this Agreement has made such investigation of the facts and law pertaining to this Agreement, and of

all other matters pertaining thereto, as it deems necessary, and has consulted with legal counsel concerning these matters.

7. Attorney's Fees

Tenant hereby waives any right to recover attorneys' fees and costs from City arising out of this transaction.

8. Indemnity By Tenant

Tenant shall indemnify, defend and hold City harmless from and against any claims, demands, liabilities, losses, judgments, expenses and attorneys' fees resulting from the breach by Tenant of any provision of this Agreement or the falsity of any representation or warranty made by Tenant contained in this Agreement.

9. Entire Agreement

This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein.

10. Partial Invalidity

In the event that any term, covenant, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the remaining provisions shall continue in full force and effect.

11. Waiver

The provisions of this Agreement may be waived, altered amended or repealed, in whole or in part, only upon the written consent of all Parties to this Agreement. The waiver by one party of the performance of provision of this Agreement shall not invalidate this Agreement, nor shall it be considered as a waiver of any subsequent breach of the same or other provisions of this Agreement.

12. Headings

The headings, subheadings and numbering of the different paragraphs of this Agreement are inserted for convenience only and shall not be considered for any purpose in construing this Agreement.

13. Governing Law

The rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

14. Successors In Interest

Subject to any restrictions against assignment contained herein, and to any legal limitations on the power of the signatories to bind non-signatories to this Agreement, this Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, executors, estate, heirs, legatees, Agents and related entities of each of the parties hereto.

15. Necessary Acts

Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

16. Advice Of Legal Counsel

Each party hereto, by its due execution of this Agreement, represents to every other party that it has reviewed each term of this Agreement with its legal counsel and that hereafter no party shall deny the validity of this Agreement on the ground that the party did not have advice of legal counsel. Each party has had the opportunity to receive independent legal advice with respect to the advisability of making this Agreement and with respect to the meaning of California Civil Code Section 1542. Tenant was represented by Michael Grennier, Law Offices of Steve Pell, 2633 Loma Vista Road, Ventura, CA 93003-1548.

17. Parties Have Not Transferred Right Or Claims

The Parties hereto each represent and warrant to the other party that they have not

assigned, transferred or subleased to any third party any of the rights, claims, causes of action or items to be released or transferred which they are obligated to transfer or to release as part of this Agreement.

18. Authority To Execute This Agreement

Each entity executing this Agreement represents that it is authorized to execute this Agreement. Each person executing this Agreement on behalf of an entity, other than an individual executing this Agreement on his or her own behalf, represents that he or she is authorized to execute this Agreement on behalf of said entity.

19. Construction

Each party has cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, or of any of its terms and provisions, the same shall not be construed against any party.

20. Notices

All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall either be delivered in writing personally or be sent by telegram or by regular or certified first class mail, postage prepaid, deposited in the United States mail, and properly addressed to the party at its address set forth below, or at any other address that such party may designate by written notice to the other party:

To City: **City of Oxnard**
Capital Projects
Cynthia Daniels
1060 Pacific Avenue, Building 2
Oxnard, CA 93030

With copy to: **City Attorney**
City of Oxnard
305 West Third Street
Oxnard, CA 93030

To Tenant: **Michael Grennier**
Law Offices of Steve Pell

2633 Loma Vista Road
Ventura, CA 93003-1548

21. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first written above.

TENANT:
Jose Angulo dba Anita's Restaurant

Jose Angulo

Social Security or Tax ID No.

Date June 20, 2007

CITY OF OXNARD:

ATTEST:

Dr. Thomas E. Holden, Mayor

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

07-16-07
Gary L. Gillig, City Attorney

APPROVED AS TO CONTENT:

Director of Public Works