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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2012 JAN 11 PM 2:28

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: January 24, 2012

RE: Conduct a Public Hearing and Upon Conclusion Consider Adopting Proposed Resolutions Of Necessity Declaring the Following Property Interests Necessary for Public Purposes and Authorizing the City to Initiate Condemnation Proceedings For Acquisition of the Following Property Interests for the Right of Way Phase of the 42nd Avenue and High Street Access Improvement Project: (A) Easements in Portions of Assessor Parcel Numbers 033-2203-006 and 033-2203-004-02 and, commonly known as 4200 Alameda Avenue; (B) Fee and Easement in Portions of Assessor Parcel Number 34-2295-001-03, commonly known as 600 High Street; and (C) Fee Underlying a Portion of a City Right-of-Way Between APN 033-2250-013-01 and 033-2203-002

SUMMARY

Staff has determined that acquisition by the City of Oakland ("City") of certain property rights—fee, permanent easement and temporary construction easement (collectively the "Property Rights")—is necessary for widening and extension of the right of way for the 42nd Avenue and High Street Access Improvement Project ("Project"). The Project involves the implementation of circulation improvements for local roadways at the Interstate 880/State Route 77 (42nd Avenue) interchange. Specifically, circulation and capacity improvements are planned for 42nd Avenue, High Street and Alameda Avenue. Local street realignments are proposed for Howard Street and Jensen Street. Staff proposes that the City Council authorize acquisition by eminent domain of these Property Rights from parcels owned by Equilon Enterprises, Laurence C. & Diane M. Webster, and the unknown successor, if any, to the defunct Leona Chemical Company.

This report has been prepared in order to set forth the bases for staff's recommendation that the Council adopt the attached resolutions of necessity (the "Resolutions"). The legal descriptions of the Property Rights to be acquired are attached to the respective Resolutions—*Exhibits A-1, A-2; B-1, B-2, B-3, and B-4; and C-1*, respectively—along with plat maps. (See also Table 1, on page 3, for summary descriptions). The City Council previously approved the negotiated acquisition of the property interests necessary for the Project, via City Ordinance No. 13044 C.M.S. adopted on November 9, 2010. The Property Rights now at issue are among the property interests identified in that Ordinance for negotiated acquisition, but the City has not successfully negotiated the acquisition of these remaining Property Rights. The Equilon Enterprise parcel is under separate litigation and its corporate counsel has advised the City to complete the property rights acquisition by exercising its eminent domain power. The Webster parcel owners' final counter offer was not accepted by the City; therefore, the City must acquire the property rights through condemnation. After several unsuccessful attempts to contact the owners of the defunct

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Public Works Committee
January 24, 2012

Leona Chemical Company, the City determined to convey the parcel title from road easement to fee through eminent domain.

This report shows that it is necessary for the City to acquire the Property Rights by eminent domain in order to certify the Right of Way Phase of the Project. (A description of the Project and the project area follows in the "Background Section" of this report.) The proposed Resolutions contain the required findings that the City, having made offers to purchase the subject Property Rights at their appraised fair market value (unless the owner could not be located), is authorized to acquire the Property Rights through its eminent domain powers by filing an eminent domain action in court.

Staff recommends that the City adopt the attached Resolutions of Necessity which authorize the commencement of eminent domain proceedings to acquire the Property Rights as described and shown in the map and legal description attached to the Resolutions. Adoption of the Resolutions contributes toward and is consistent with the Public Works Agency Mission, which states: *"Service to the public is our sole reason for existence. Oakland Public Works plans, builds and maintains Oakland's physical and environmental infrastructure for the residents, businesses and visitors of the city, making it a sustainable and desirable place to live, work, invest and visit."*

FISCAL IMPACT

Funding was obtained from City Resolution No. 76735 C.M.S., dated October 2, 2001, that authorized the application, acceptance and appropriation of the 2002 Regional Transportation Improvement Program funds for the Project. Funding for the acquisition of the Property Rights is available from the Grant Fund State of California-Department of Transportation (2140), 42nd Avenue High Street Right of Way Project (C98530), Acquisition of Right of Way Account (57111), Capital Improvement Project Transportation Services Organization (92246).

The Property Rights have been appraised and offers to acquire the Property Rights at the appraised fair market values have been made to all of the property owners, except for the property that had been owned by the now-defunct Leona Chemical Company. The purpose of the Resolutions is to acquire the last remaining property interests that are needed to construct the Project.

Funding for right of way acquisition is being provided by a State Transportation Improvement Program (STIP) grant programmed in 2007. The grant timeline requires that reimbursable activities (e.g., City deposit into the State Condemnation Fund of the appraised value for the acquisitions, at the commencement of the eminent domain lawsuit) be completed no later than February 29, 2012. This deadline has been extended once, previously, and no further time extensions will be allowed by the California Transportation Commission (CTC). Programming for construction funds will follow in future STIP cycles.

BACKGROUND

The City of Oakland, lead agency for this project, received authorization from the Regional Transportation Improvement Program to proceed with the 42nd Avenue /High Street Access Improvements Project in Alameda County. The completed Project will provide traffic flow improvements for local streets at the I-880/SR77 (42nd Avenue) interchange. Circulation and intersection capacity improvements are proposed for 42nd Avenue (SR77), High Street and Alameda Avenue.

The proposed project will improve access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Additionally, the proposed improvements will relieve local traffic congestion, freeway ramp backups and promote business and economic development opportunities for both the Port of Oakland and the City of Oakland.

The 42nd Avenue/High Street access improvements are being coordinated with Caltrans' seismic retrofit of the High Street overhead on I-880 (State Project 165421), currently under construction.

The Project goals include:

- Extend 42nd Avenue to the south from I-880 to Alameda Avenue
- Extend Jensen Street to the west connecting High Street to the newly created 42nd Avenue
- Expand High Street to include dual left-turn lanes in both directions at the frontage road intersections of Oakport Street and Coliseum Way

On November 9, 2010, the City Council adopted Ordinance No. 13044 C.M.S. authorizing the negotiated acquisition of the property interests for the Project. The City has currently, either accepted contracts or closed escrow on twenty-one of the twenty-seven property interests required for the Project. Table 1 shows the Property Rights proposed to be acquired by eminent domain:

Table 1

Exhibit	Grantor	Property Address	Required Area (SF±)	Interest To Be Acquired	Assessor's Parcel Number
A-1	Equilon Enterprises	600 High Street	2,015	Part-take	034-2295-001-03
A-2	Equilon Enterprises	600 High Street	1,829	TCE	034-2295-001-03
B-1	Laurence C. & Diane M. Webster	4200 Alameda Avenue	1,062	Easement	033-2203-006-00
B-2	Laurence C. & Diane M. Webster	4200 Alameda Avenue	3,489	Easement	033-2203-004-02
B-3	Laurence C. & Diane M. Webster	4200 Alameda Avenue	418	TCE	033-2203-004-02
B-4	Laurence C. & Diane M. Webster	4200 Alameda Avenue	42	TCE	033-2203-006-00
C-1	defunct Leona Chemical Company	n/a	7400	Fee	n/a

The City's acquisition of the Property Rights is necessary for the newly aligned and reconfigured High Street, Alameda Avenue and Jensen Street.

A summary of the larger parcels and portions of the parcels proposed for acquisition follows:

600 High Street (APN 034-2295-001-03; Exhibits A-1, A-2)

Description of the Larger Parcel – The parcel is a square corner lot that covers approximately 44,213 square feet. It is improved with a Shell gas station, mini-mart and a car wash. To the northeast, the subject property abuts to the intersection of High Street, Alameda Avenue and Oakport Street. The parcel has ±200 linear feet of frontage along High Street to the north. The parcel is directly across from the Interstate-880 High Street on-ramp for south bound traffic.

Partial Acquisitions – Acquisitions of property interests are required to widen High Street to accommodate regulated lane dimensions and to facilitate the bike route. Specifically, the Project requires a partial permanent acquisition of a strip of land in fee along the High Street frontage. The partial fee acquisition is ±2,015 square feet. In addition, a 7 foot wide temporary construction easement of ±1,829 square feet is required for a three year period, or until the project is completed, whichever is earlier.

4200 Alameda Ave (APN 033-2203-006-00, 033-2203-004-02; Exhibits B-1, B-2, B-3; B-4)

Description of the Larger Parcel – Two parcels assembled to create a larger triangular, approximately ± 40,803 square foot parcel. The site is vacant land and unoccupied. The parcel

abuts the Home Depot parking lot to the northwest. It has ± 189 linear feet of frontage along East 8th Street to the east and ± 300 linear feet of frontage along Alameda Avenue to the South. The property is also in close proximity to an off ramp from southbound Interstate 880.

Partial Acquisitions – Acquisition of property interests are required for the new 42nd Avenue alignment, for the through lane eastbound Alameda Avenue to 42nd Avenue, and the continuation of northbound Howard Street for the right turn onto 42nd Avenue and northbound Jensen Street to 42nd Avenue for the right turn lane. Specifically, the Project requires two permanent partial roadway easement acquisitions. The roadway easements will occupy the western tip of the property. The first easement, from parcel, 033-2203-006 is $\pm 1,062$ square feet. The second easement, from parcel 033-2203-004-02, is $\pm 3,489$ square feet. Since these are easements and will not require any conveyance of fee title, the subject property will have a remainder of $\pm 40,803$ square feet; however, the fee owner will not have access to the area within the road easement. The Project also requires two temporary construction easements ± 42 square feet from Parcel 033-2203-006 and ± 418 square feet from Parcel 033-2203-004-02. The temporary construction easements are required for a three year period or until the project is completed, whichever is earlier.

Small Piece of Land between 033-2250-013-01 and 033-2203-002 (Exhibit C-1)

Description of the Larger Parcel – The parcel is an interior $\pm 7,400$ square foot rectangular strip of land encumbered by a road easement. The parcel abuts an abandoned rail spur to the north, a recently acquired City parcel to the east and a full service car wash to the west. The parcel has ± 41 linear feet frontage on High Street. The parcel's initial purpose was to be utilized as right of way to extend Jensen Street beyond High Street to Alameda Avenue. Although the right of way extension did not happen, the City has continued to hold an easement for right of way purposes. However, fee title is apparently held by a defunct corporation—Leona Chemical Company.

Acquisition – This parcel is for the extension of Jensen Street to Alameda Avenue and the connection with 42nd Avenue. Commencement of an eminent domain action will allow the City to obtain fee title, clearing the present cloud caused by a defunct corporation purportedly holding title. Further, the incorporation of the land into the Project will utilize a portion of the parcel as originally planned. The remainder of the parcel will be incorporated into the City owned parcel which abuts to the east. This action will create a larger parcel for future redevelopment.

KEY ISSUES AND IMPACTS

Necessity of the Project

The goal of the Project is to provide circulation improvements for local roadways at the I-880/SR-77 (42nd Avenue) interchange by eliminating bottlenecks at the High Street interchange. The Project will facilitate access to Interstate 880 by widening and realigning local streets, including Howard Street, Oakport Street, and Jensen Street. The Project will improve

intersection capacity at 42nd Avenue (SR-77), High Street, and Alameda Avenue, thus, improving access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Moreover, the proposed improvements will relieve local traffic congestion, reduce freeway ramp backups and ultimately promote business and economic development opportunities for both the Port of Oakland and the City.

In the absence of the Project, the City would miss opportunities to improve traffic circulation. In addition, the City would not take advantage of available funding to support this Project. Finally, if the City does not complete the Project at this time, it will lose its opportunity to coordinate the Project with construction underway on the state highways adjacent to the Project.

Location and Design of the Project for the Greatest Public Good With the Least Private Injury

As noted above, the Project will achieve significant improvements in traffic circulation in this area. The City has planned the Project so as to minimize the amount of private property necessary for the Project, to minimize the impact on remainder properties of partial property acquisitions for the Project, and to minimize negative impacts from alterations in traffic circulation while maximizing positive impacts. The City has considered alternative design plans for the Project, and has concluded that these plans would achieve a lesser level of improvement while causing greater impact to ownership and use of private property in the vicinity of the Project.

Necessity of the Property Rights for the Project

The Property Rights described in the three Resolutions are integral to the Project's optimum alignment and configuration.

600 High Street

The portion of the site required permanently is for widening High Street to accommodate the regulated lane dimensions and to facilitate the bike route. The City also requires the temporary easements for construction of the permanent roadway improvements and to relocate certain improvements for the owner of the remainder property.

4200 Alameda Avenue

A permanent easement is required over a portion of the site for:

- The new 42nd Avenue alignment.
- The through lane from eastbound Alameda Avenue to 42nd Avenue.
- The continuation of northbound Howard Street for the right turn onto 42nd Avenue and northbound Jensen Street to 42nd Avenue for the right turn lane.

In addition, temporary easements are necessary to facilitate construction of permanent roadway improvements.

Small Piece of Land between 033-2250-013-01 and 033-2203-002

The parcel is for the extension of Jensen Street to Alameda Avenue and connection with 42nd Avenue.

Without the acquisition of these Property Rights, the realignment and roadway improvements will not be possible. The Project could not be completed.

Efforts to Acquire the Property Rights by Negotiation

As required by Government Code Section 7267.2, the City obtained appraisals that were prepared by an appraiser licensed through the California Office of Real Estate Appraisers. The appraisals were updated, reviewed and approved by a qualified review appraiser. The appraisals established the fair market value purchase price for the property rights and represent just compensation to the owners of these Properties. Pursuant to Government Code Section 7267.2, the City has made good faith offers to purchase the property rights from the owners. Each offer was based on the fair market value of the subject property in question as established by the updated appraisals.

600 High Street

The last equalized county assessment roll and title searches show the owner of these Property Rights as Equilon Enterprises, LLC. On October 1, 2010, the City forwarded a written offer to purchase the Property Rights at this location to an Equilon representative, Steve Hardin. A copy of that offer is ***Attachment A*** to this Report.

Following this offer, Equilon representatives notified City representatives that this site is the subject of litigation between Equilon and the operator of the Shell-branded gasoline retail station at the site, and that the operator is likely to become the owner of the property. City representatives have corresponded with counsel for both Equilon and the operator (Edwards & Anderson Inc.) regarding the City's project, and those representatives have stated that their clients believe the City's acquisition proposal to be acceptable. The City has not yet finalized an agreement among all parties for this acquisition, however. Staff recommends that the Council adopt the Resolution regarding the 600 High Street Property Rights so that the City can proceed with the acquisition if the parties are unable to agree, despite their preliminary discussions, on final terms for the City's acquisition.

4200 Alameda Avenue

The owners of record of this site, Laurence C. and Diane M. Webster, asked the City during its pre-acquisition investigations to correspond with their son, Mike Webster. The City forwarded a purchase offer to Mr. Webster on his parents' behalf on March 11, 2011. A copy of that offer is ***Attachment B*** to this Report.

The City and its representatives subsequently have discussed the City's acquisition of the Property Rights with counsel for the Websters. Although these discussions have been informative, they have not resulted to date in any agreement between the City and the Websters

for acquisition by the City of the 4200 Alameda Avenue Property Rights. Staff intends to continue these negotiations, but recommends that the Council adopt the Resolution regarding the 4200 Alameda Avenue Property Rights so that the City can proceed with the acquisition if the parties are unable to agree on terms for the City's acquisition.

Small Piece of Land between 033-2250-013-01 and 033-2203-002

Public records and title searches show the last owner of record of this property to have been the Leona Chemical Company. Records of the California Secretary of State show that the Leona Chemical Company dissolved in December 1933. Subsequent research, including a chain of title search by the title insurer for the Project, did not reveal who might have succeeded in any unrecorded transactions to the Leona Chemical Company's undistributed assets. Because the City's diligent and good faith efforts to locate the property's rightful owner did not yield useful information, the City has not made any offer to purchase these Property Rights. Staff recommends that the Council adopt the Resolution regarding the Jensen Street Property Rights so that the City can proceed with the acquisition, effecting service on the owners of these Property Rights by publication and posting at the property.

Opportunity for Hearing

In compliance with Section 1245.235 of the California Code of Civil Procedure, written notice of the hearings by the City Council has been given to the owners of record of the 600 High Street and 4200 Alameda Avenue Property Rights and to their known representatives. Copies of these notices are ***Attachments C and D*** to this Report. The notices explained that a reasonable opportunity would be given to appear and be heard on the following matters:

- (a) Whether the public interest and necessity require the Project;
- (b) Whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- (c) Whether the property sought to be acquired is necessary for the Project; and
- (d) Whether the offer required by Section 7267.2 of the Government Code has been made to the owner of record.

Because the City does not know who may have succeeded to the interests of the Leona Chemical Company in the Jensen Street Property Rights, the City did not send special notice to any person regarding this hearing relative to Jensen Street.

Timing Considerations

Time is of the essence. The Project is planned to eliminate bottlenecks at the High Street interchange and facilitate access to Interstate 880 and the City of Alameda. The Project involves the widening and new realignment of local streets, connector roads and ramps in the vicinity of the interchange.

The Project has been a part of the City's Capital Improvement Program since 1999 and was affirmed as a priority project by the City Council through passage of Resolution No. 81038 C.M.S. on November 6, 2007. Resolution No. 81038 C.M.S. endorsed the top funding priorities for the 2008 countywide transportation plan for the next 25 years.

Funding for right of way acquisition is being provided by a State Transportation Improvement Program (STIP) grant programmed in 2007. The grant timeline requires that reimbursable activities be completed no later than February 29, 2012 (e.g., the deposit of the appraised values into the State Condemnation Fund). This deadline has been extended once, previously, and no further time extensions will be allowed by the California Transportation Commission (CTC). Programming for construction funds will follow in future STIP cycles.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

The City prepared an Initial Study (dated December 18, 2000), which evaluated the environmental impacts of the Project, and the City Council adopted a Mitigated Negative Declaration and approved the Project on October 2, 2001, via Resolution No. 76735 C.M.S. ("2001 MND"). No legal actions were filed challenging the 2001 MND; the validity of the 2001 MND may thus not be challenged. The City has relied on the 2001 MND in 2007 and again in 2009 when it took further actions to advance the Project.

Recently, the City has prepared an Addendum to the 2001 MND ("2012 Addendum"), demonstrating that no further/additional CEQA review is required. Specifically, The 2012 Addendum concludes that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2001 MND was adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 2001 MND, or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2001 MND, and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the Resolutions of Necessity, the City can rely on the previously adopted 2001 MND, as documented in the 2012 Addendum.

The monitoring and reporting of CEQA mitigation measures in connection with the Project will be conducted in accordance with the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, which is also to be adopted. Adoption of this Program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of the Public Resources Code. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

The CEQA Documents consist of the Addendum as well as Resolution No. 76735 C.M.S. and accompanying City Council Agenda Report, adopting the December 18, 2000, Initial Study and 2001 MND. The CEQA documents were previously to the City Council under separate cover and are located in the Office of the City Clerk, the Planning Department of the Community and Economic Development Agency, and on the Web at <http://www2.oaklandnet.com/Government/o/CEDA/o/PlanningZoning/s/Application/DOWD009157>.

THE PROPOSED RESOLUTIONS OF NECESSITY

The proposed Resolutions of Necessity have been prepared in accordance with Code of Civil Procedure Section 1245.210 et seq., including Section 1245.230. The Resolutions declare that the City makes the findings required by the Eminent Domain Law, and specifically by Section 1245.230 of the Code of Civil Procedure, and that the public interest and necessity requires the City to exercise its power of eminent domain authority over the Property Rights in order to accomplish the Project, specifically for completion of site control for the Project right-of-way. The Right of Way Phase cannot be certified without acquisition of the specified Property Rights. The Resolutions further state that the City is authorized by California law, including Government Code sections 37350, 37350.5, 37351, 37353, 40401 and 40404, to acquire the Property Rights by eminent domain. To adopt the Resolutions, approval by at least two-thirds of the City Council members is necessary. (Code Civ. Proc., § 1245.240.)

SUSTAINABLE OPPORTUNITIES

Economic: Oakland residents rely on the efficient operation of City streets to access freeways as a means to travel to and from work, school and daily tasks. The roadway improvement will facilitate efficient access to I-880 as well as improve circulation within the Central Estuary area.

Environmental: The combination of the City and Caltrans projects will improve traffic circulation and thus relieve congestion along both 42nd Avenue and High Street. Less vehicular congestion will improve air quality and reduce noise.

Social Equity: The project will improve the efficiency of traffic circulation within the City and access to the freeway. These improvements will facilitate mobility for both area residents and non-residents who work and recreate in Oakland and Alameda.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no significant disability or senior citizen access issues identified as the result of the proposed action.

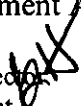
ACTION REQUESTED OF THE AGENCY

Adopt the Resolutions that authorize the City of Oakland Council to commence eminent domain proceedings to acquire the above referenced Property Rights as described and shown in the map and legal description attached to the Resolutions. This action allows the City to obtain site control and certify the Right of Way phase of the Project.

Respectfully submitted,



Fred Blackwell, Assistant City Administrator
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Economic Development and Redevelopment 

Reviewed by: Hamid Ghaemmaghani, Acting Manager
Real Estate Division

Prepared by: Ava M. Jourdain, Real Estate Agent

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:


Office of the City Administrator

NO FEE DOCUMENT

Government Code Section 27383

RECORDING REQUESTED BY:

The City of Oakland

WHEN RECORDED, MAIL TO:

Community and Economic Development Agency
Real Estate Division
250 Frank Ogawa Plaza, 4th Floor
Oakland, California 94612

Attention: Ava M. Jourdain

Attachment A

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

The Acquisition document in the form of a Grant Deed covering the property particularly described in the following instrument has been executed and delivered to Ava M. Jourdain, Real Estate Agent for the City of Oakland.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The City of Oakland, a municipal corporation hereinafter referred to variously as "City" or "Grantee" and Equilon Enterprises, LLC, a Delaware limited liability company, hereinafter referred to variously as "Grantor" and "Owner" have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for the property transfer and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) Grantor owns that certain real property located at 600 High Street, Oakland, OA, Assessor's Parcel Number: 034-2295-001-03 and more specifically described in the preliminary title report (Order Number: 1117005485-JM) from Old Republic Title Company which copy is attached hereto and made a part hereof as Exhibit A.
- (C) Grantee requires a portion of said property for a public use (the "Project") for which Grantee may exercise the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire the portion of the property identified as Exhibit B.

Both Grantor and Grantee recognize the expense, time, effort, and risk to both Grantor and Grantee in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The City shall:

- (A) Pay the undersigned Grantor the sum of \$153,000 for the property or interest as conveyed by the Grant Deed when title to said property vests in the Grantee free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the Grant Deed.
 - c. Easements or rights of way over said land for public or quasi- public utility or public street purposes, if any.
- (B) Pay all escrow and recording fees incurred in this transaction, and the premium charged for title insurance desired by the City. Said escrow and recording charges shall not, however, include documentary transfer tax.
- (C) Have the authority to deduct and pay from the amount shown in Section 2(A) above, any amount necessary to satisfy any delinquent taxes or any outstanding liens due for any year except the tax year in which this escrow closes, together with penalties and interest thereon and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow.

3. The City shall also:

- (A) Pay for property rights, improvements and damages for City's Project (see Exhibit C, Appraisal Summary Statement):

1. Property rights include:

Fee Land Acquisition

2,015 square feet ("sf")

\$ 76,570

rt 77,000

- (B) Improvements Acquired:

Paving, Curbs, Landscaping

± 2,089 sf

\$ 20,890

Staging, Clearing

1,500

Engineering, Permits, Legal

8,000

3 Parking Lights @ \$3,000 each

9,000

1 Advertising Sign @ \$10,000 ea	10,000
1 Advertising Sign @ \$15,000 ea	<u>15,000</u>
Subtotal	\$ 64,390

Contingency	10% of subtotal	\$ 4,489
Management and Coordination	15% of subtotal	<u>\$ 6,734</u>
		\$ 75,613
Total Acquired Improvements (rounded)		<u>\$ 76,000</u>

(C) Total Permanent Partial Acquisition

Required Partial Acquisition	\$77,000
Total Acquired Improvements	<u>\$76,000</u>

Total Valuation, Permanent Partial Acquisitions = \$153,000

(B) Open an escrow account and deposit \$153,000 therein. This amount shall constitute the full payment for acquisition, possession and/or use, including damages, if any, from the date of this Agreement.

It is understood and agreed by and between the parties hereto that the payment in Section 3 (B) above includes, but is not limited to, payment for the following IMPROVEMENTS considered to be part of the realty and being acquired by the City in this transaction:

- (1) 2,089 square feet of paving, curbs, landscaping
- (2) 3 Parking Lights
- (3) 2 Advertising Signs

4. Any or all moneys payable under this contract, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s) shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder; said mortgagee(s) or beneficiary(s) to furnish Grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.
5. The amount shown in Section 2(A) herein constitutes full payment for such ownership, possession and use, including damages, if any, from the date this document is executed.
6. The right to remove and dispose of improvements shall commence on July 1, 2015 or the close of escrow controlling this transaction, whichever occurs first. It is agreed and confirmed by the parties hereto that notwithstanding any other provisions in this contract, the City shall have the right of ownership, possession and use of the subject property.

7. It is understood that a portion of the property will be encumbered with a temporary construction easement ("TCE") in favor of the City, as shown in red on the map attached hereto as Exhibit C, and made a part hereof. The TCE is for the construction of the Project. It is further understood that in no event shall the temporary right granted herein extend beyond the completion of the construction project, as evidenced by a certificate of completion, or three years from the Notice to Proceed, whichever is earlier, except as provided in Section 7. The Resident Engineer shall notify the Grantors at telephone number (360) 778-3053, at least 72 hours prior to the commencement of actual construction, or by 10 days written notice, first class mail, delivery deemed completed on date of mailing.
8. City agrees to indemnify and holds harmless Grantor from any liability arising out of City's operations under this agreement. City further agrees to assume responsibility for any damages proximately caused by reason of City's operations under this agreement, and City will, at its option, either repair or pay for such damage.
9. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Grantor further agrees to indemnify and hold City, its councilmembers, officers, employees, agents and contractors harmless, and reimburse the City for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month. Furthermore, Grantor agrees to indemnify the City, its members, officers, employees, agents and contractors from any liability or damages arising out of Grantor's operations or performance under or associated with this agreement.
10. At no expense to Grantors and at the time of construction, City's contractor shall remove 2,089 square feet of paving, curbs, landscaping, three (3) parking lights and two (2) advertising signs pursuant to the City's construction contract. The landscaping, curbs and paving will be removed to a depth below finished grade. Grantor hereby grants Permission to City or its authorized agent to perform said removal work.
11. All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the City, shall be left in as good condition as found.
12. Successors and Assigns. This agreement shall obligate, extend to, and inure to the benefit of the Parties hereto, and the legal successors, assigns, transferees, grantees, and heirs of each Party hereto.

- 13. It is understood that the property being acquired in this transaction may contain Hazardous Waste requiring mitigation under State or Federal law to protect public health. The acquisition costs reflect the fair market value of the property without the presence of contamination. If site cleanup is required on the property, the City may elect to exercise its right to pursue the responsible parties to recover cleanup costs from those who caused or contributed to the Hazardous Waste on, in or under the property.
- 14. This transaction will be handled through an escrow with Old Republic Title, 555 12th Street, Ste. 2150, Oakland, CA 94607.

In Witness Whereof, the Parties have executed this agreement the day and year first above written.

City of Oakland:

By: _____
Deanna J. Santana
City Administrator

Grantor:

Date: _____

By: _____

Equilon Enterprises ,LLC

Date

Approved as to Form:

By: _____
Deputy City Attorney

No Obligations Other Than Those Set Forth Herein Will Be Recognized

Attachment B

City of Oakland – Real Estate Division 250 Frank Ogawa Plaza 4th Floor Oakland Ca 94612



Oakland _____, California

_____, 20_____

Road Easement 4200 Alameda Avenue

The Acquisition document in the form of a Road Easement Deed covering the property particularly described in this instrument has been executed and delivered to Ava M. Jourdain, Real Estate Agent for the City of Oakland.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties Laurence C. Webster and Diane M. Webster have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
 - (B) Grantee requires said property described in Exhibit A for the City Road purposes, a public use for which Grantee may exercise the power of eminent domain. Grantor(s) is compelled to sell, and Grantee is compelled to acquire the property.
 - (C) Both Grantor(s) and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
2. The City shall:
- (A) Pay the undersigned Grantor(s) the sum of \$150,000 for the property as conveyed by the above referenced document when title to said property vests in the City free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. Taxes for the tax year in which this escrow shall be closed and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

- b. Covenants, conditions, restrictions and reservations of record, or contained in the above referenced document.
 - c. Easements or rights of way over said property for public or quasi-public utility or public street purposes, if any.
- (B) Pay all escrow and recording fees incurred in this transaction, and if title insurance is required by the State, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer tax.
 - (C) Have the authority to deduct and pay from the amount shown in Clause 2(A) above, any amount necessary to satisfy any bond demands and any delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and/or nondelinquent assessments which have become a lien at the close of escrow.
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the City, including the right to remove and dispose of improvements, shall commence on July 1, 2015, or the close of escrow controlling this transaction, whichever occurs first (the "Commencement Date"), and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages and interest, if any, from the Commencement Date.
 4. It is agreed that payment in Clause 2(A) above is payment in full to compensate the Grantor for 4,551 square feet as a permanent easement for road purposes along the parcel's Alameda Avenue frontage.
 5. It is agreed that the consideration for this conveyance includes all costs that have been or may hereafter be incurred by the Grantor herein, or its successors or assigns, for the relocation or rearrangement of any and all improvements that are located on the property of Grantor adjacent to the property conveyed in Exhibit A and the Grantor for itself and its successors or assigns, hereby waives any and all claims for damages of whatever nature that may hereafter accrue to said remaining property by reason of the construction of the highway improvement in the manner proposed herein, including any damages that have or may hereafter arise to such remainder in the event said existing or future improvements are not relocated or rearranged.

It is further agreed that Grantor has been compensated for those improvements in the amount of \$13,062.00 specifically for:

Paving	±4,551 square feet
Fencing	±220 linear feet

6. It is agreed that payment in Clause 2(A) is payment in full to compensate the Grantor for the expense of performing the following work: The reconstruction of a replacement fence. Grantor acknowledges that no payment is made for the purchase of the Improvements. It is understood that payment for reconstruction precludes any increase to the purchase price.

7. The Grantee, or its authorized agent, is hereby granted the right to remove and dispose of the Paving and Fencing as it may deem fit.
8. Grantor(s) warrant(s) that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Grantor(s) further agrees to hold City harmless and reimburse the City for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor(s) for a period exceeding one month.
9. City agrees to indemnify and holds harmless Grantor(s) from any liability arising out of City's operations under this agreement. City has agreed to assume responsibility for any damages proximately caused by reason of City's operations under this agreement and City will, at its option, either repair or pay for such damage.
10. This transaction will be handled through an escrow with Old Republic Title Company, 555 12th Street, Ste. 2150, Oakland, CA 94607.

In Witness Whereof, the Parties have executed this agreement the day and year first above written.

Deanna J. Santana
City Administrator

Grantor

Laurence C. Webster

Date

Diane M. Webster

Date

Approved as to form:

Office of the City Attorney

No Obligation Other Than Those Set Forth Herein Will Be Recognized

Attachment C

Date January 4, 2012

42nd Avenue and High Street Access Improvement Project

**CITY OF OAKLAND
NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION OF RESOLUTION
AUTHORIZING ACQUISITION OF PROPERTY
BY EXERCISE OF THE POWER OF EMINENT DOMAIN
42ND Avenue and High Street Project
(Code of Civil Procedure Section 1245.235)**

Thomas P. Bleau
Bleau Fox, A Professional Law Corporation
3575 Cahucnga Blvd. West, Suite 580
Los Angeles, CA 90068

Re: Acquisition of a Portion of 600 High Street
(APN 034-2295-001-03)

Dear Mr. Bleau:

The purpose of this notice is to advise you regarding upcoming hearings being scheduled for the City of Oakland Public Works Agency Committee (the "Committee") and the Oakland City Council ("Council") regarding a Resolution of Necessity to acquire by eminent domain certain property interests for the 42nd Avenue and High Street Access Improvement Project ("Project"). At the Tuesday, January 24, 2012, Committee meeting, City of Oakland staff will ask the Committee to consider whether or not to recommend that the Council adopt a Resolution of Necessity to acquire a portion of Assessor Parcel Number 034-2295-001-03 for the Project. (See attached for descriptions and depictions of property interests proposed for acquisition.) The Committee meeting will occur between 10:30 am and noon in Oakland City Hall, One Frank H Ogawa Plaza, Hearing Room I, Oakland, CA.

Thereafter, the Council will vote on the proposed resolution in accordance with the provisions of Section 1245.235 of the Code of Civil Procedure. The Council meeting will occur on Tuesday, February 7, 2012 beginning at 7:00 pm at Oakland City Hall, located at One Frank H. Ogawa Plaza, City Council Chamber, Third Floor, Oakland, CA. The Council will receive information pertaining to the proposed Resolution, including the recommendation by the Committee, and to consider whether or not to adopt the Resolution.

Acquisition of these property interests by the City may be necessary for effective site control of the proposed right of way. The enclosed map shows the approximate location of the property and of the Project. Copies of this notice are being sent to the members of the Oakland City Council.

You may appear at the Committee's January 24th meeting. In addition, you have the right to appear at the City Council's February 7th meeting. At each meeting, you may be heard on the matters specified in section 1240.030 of the Code of Civil Procedure and on any other matter material to the Council's decision on the proposed Resolution. These matters include:

- whether the public interest and necessity require the proposed project;
- whether the proposed project is planned or located in the matter that will be most compatible with the greatest public good and the least private injury;
- whether the property is necessary for the proposed project; and
- whether the purchase offer required by section 7267.2 of the Government Code has been made.

You may file a written request to appear and be heard on these issues at either meeting within 15 days after the mailing date of this notice, which appears at the top of the first page. Please address any written request to Ava M. Jourdain, Real Estate Services at 250 Frank Ogawa Plaza, Suite 4314, Oakland, CA 94612 Fax: (510) 238-2240, phone number (510) 238-6363. Failure to file a written request to appear and be heard within 15 days after the mailing date of this notice will result in your waiver of this right.

If the Council approves the proposed Resolution of Necessity, the timeline for the commencement of eminent domain proceedings will begin. The Council will take prompt steps to commence an eminent domain action and to obtain possession of the property at issue. Negotiations will continue, however, in hopes of resolving any disputes over the terms of the Council's acquisition quickly and fairly.

If you have any questions or concerns about this notice, please call Ava Jourdain at (510) 238-6363 during normal business hours. Thank you.

Sincerely,

Ava M. Jourdain
Real Estate Agent, SR/WA, Community and Economic Development

enclosure: legal descriptions and maps

Attachment D

Date January 4, 2012

42nd Avenue and High Street Access Improvement Project

**CITY OF OAKLAND
NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION OF RESOLUTION
AUTHORIZING ACQUISITION OF PROPERTY
BY EXERCISE OF THE POWER OF EMINENT DOMAIN
42ND Avenue and High Street Project
(Code of Civil Procedure Section 1245.235)**

Mike Webster
2304 West 16th Street
Long Beach, CA 90813

Re: Acquisition of a Portion of 4200 Alameda Avenue
(APNs 033-2203-006, 033-2203-004-02)

Dear Mr. Webster:

The purpose of this notice is to advise you regarding upcoming hearings being scheduled for the City of Oakland Public Works Agency Committee (the "Committee") and the Oakland City Council ("Council") regarding a Resolution of Necessity to acquire by eminent domain certain property interests for the 42nd Avenue and High Street Access Improvement Project ("Project"). At the Tuesday, January 24, 2012, Committee meeting, City of Oakland staff will ask the Committee to consider whether or not to recommend that the Council adopt a Resolution of Necessity to acquire a portion of Assessor Parcel Numbers 033-2203-006, 033-2203-004-02 for the Project. (See attached for descriptions and depictions of property interests proposed for acquisition.) The Committee meeting will occur between 10:30am and noon in Oakland City Hall, One Frank H Ogawa Plaza, Hearing Room 1, Oakland, CA.

Thereafter, the Council will vote on the proposed resolution in accordance with the provisions of Section 1245.235 of the Code of Civil Procedure. The Council meeting will occur on Tuesday, February 7, 2012 beginning at 7:00 pm at Oakland City Hall, located at One Frank H. Ogawa Plaza, City Council Chamber, Third Floor, Oakland, CA. The Council will receive information pertaining to the proposed Resolution, including the recommendation by the Committee, and to consider whether or not to adopt the Resolution.

Acquisition of these property interests by the City may be necessary for effective site control of the proposed right of way. The enclosed map shows the approximate location of the property and of the Project. Copies of this notice are being sent to the members of the Oakland City Council.

You may appear at the Committee's January 24th meeting. In addition, you have the right to appear at the City Council's February 7th meeting. At each meeting, you may be heard on the matters specified in section 1240.030 of the Code of Civil Procedure and on any other matter material to the Council's decision on the proposed Resolution. These matters include:

- whether the public interest and necessity require the proposed project;
- whether the proposed project is planned or located in the matter that will be most compatible with the greatest public good and the least private injury;
- whether the property is necessary for the proposed project; and
- whether the purchase offer required by section 7267.2 of the Government Code has been made.

You may file a written request to appear and be heard on these issues at either meeting within 15 days after the mailing date of this notice, which appears at the top of the first page. Please address any written request to Ava M. Jourdain, Real Estate Services at 250 Frank Ogawa Plaza, Suite 4314, Oakland, CA 94612 Fax: (510) 238-2240, phone number (510) 238-6363. Failure to file a written request to appear and be heard within 15 days after the mailing date of this notice will result in your waiver of this right.

If the Council approves the proposed Resolution of Necessity, the timeline for the commencement of eminent domain proceedings will begin. The Council will take prompt steps to commence an eminent domain action and to obtain possession of the property at issue. Negotiations will continue, however, in hopes of resolving any disputes over the terms of the Council's acquisition quickly and fairly.

If you have any questions or concerns about this notice, please call Ava Jourdain at (510) 238-6363 during normal business hours. Thank you.

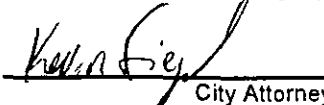
Sincerely,

Ava M. Jourdain
Real Estate Agent, SR/WA, Community and Economic Development

enclosure: legal descriptions and maps

2012 JAN 11 PM 2:28

OAKLAND CITY COUNCIL


City Attorney

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION OF NECESSITY DECLARING PROPERTY INTERESTS AT 600 HIGH STREET (PORTIONS OF APN 034-2295-001-03) NECESSARY FOR PUBLIC USE IN THE 42ND AVENUE AND HIGH STREET ACCESS IMPROVEMENT PROJECT AND AUTHORIZING THE CITY TO INITIATE CONDEMNATION PROCEEDINGS FOR THE ACQUISITION OF THOSE PROPERTY INTERESTS.

WHEREAS, The City of Oakland, lead agency for this project, has received authorization from the Regional Transportation Improvement Program to proceed with the 42nd Avenue/High Street Access Improvement Project (the "Project") in Alameda County. The Project objective is to provide circulation improvements for local roadways at the I-880/SR-77 (42nd Avenue) interchange. Specifically, circulation and intersection capacity improvements are proposed for 42nd Avenue (SR-77), High Street, and Alameda Avenue, and local street realignments are proposed for Howard Street, Oakport Street, and Jensen Street; and

WHEREAS, The proposed project will improve access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Additionally, the proposed improvements will relieve local traffic congestion, freeway ramp backups and promote business and economic development opportunities for both the Port of Oakland and the City of Oakland; and

WHEREAS, The Project goal is to extend 42nd Avenue to the south from I-880 to Alameda Avenue; to extend Jensen Street to the west connecting High Street to the newly created 42nd Avenue; and to expand High Street to include dual left-turn lanes in both directions at the frontage road intersections of Oakport Street and Coliseum Way; and

WHEREAS, On October 2, 2001, the City Council adopted a Mitigated Negative Declaration (Resolution No. 76735 C.M.S.) prepared for the Project under the requirements of the California Environmental Quality Act (CEQA), showing that the Project would have no significant environmental impacts (the "2001 MND"); and

WHEREAS, The City has prepared an Addendum to the 2001 MND for the Project, pursuant to CEQA (the "2012 Addendum"), which shows that the City can rely on the previously adopted Mitigated Negative Declaration and that no further environmental review is required; and

WHEREAS, On November 9, 2010 the City council adopted Ordinance No. 13044 C.M.S. authorizing negotiation by City staff members of voluntary agreements to acquire the Property Rights for the Project; and

WHEREAS, Construction of the Project as planned and designed will require a fee interest of ±2,015 square feet in parcel 034-2295-001-03; and

WHEREAS, Construction of the Project as planned and designed also will require temporary construction easements of ±1,829 square feet from Parcel 034-2295-001-03; and

WHEREAS, The fee interest and temporary construction easement (hereafter, the “Property”) are described and depicted more specifically on Exhibits A-1 and A-2, respectively, to this Resolution; and

WHEREAS, The City commissioned an appraisal of the Property, which has since been updated, reviewed and approved by a qualified review appraiser; and

WHEREAS, The City has made an offer to purchase the Property from its owners of record, but the owners have not accepted the City’s offer; and

WHEREAS, The City has provided notice in the manner specified in Section 1245.235 of the California Code of Civil Procedure to the persons whose property interests are to be acquired pursuant to this resolution, and whose names and addresses appear on the last equalized county assessment roll for the Property, said persons were given an opportunity to appear and be heard on the following matters referred to in Section 1240.030 of the California Code of Civil Procedure:

- a) Whether the public interest and necessity require the Project;
- b) Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether the acquisition of the Property is necessary for the Project; and
- d) Whether the offer required by Section 7267.2 of the California Government Code has been made to the owners of record.

WHEREAS, The City is authorized by the Constitution and statutes of the State of California, including, without limitation, sections 37350, 37350.5, 37351, 37353, 40401 and 40404 of the Government Code, to acquire real property by eminent domain for public purposes including improving and widening streets within the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakland that it hereby finds, determines, and declares as follows, on the basis of the evidence presented orally and in writing at the hearing at which the adoption of this resolution was considered:

1. That the public interest and necessity require the 42nd Avenue/High Street Access Improvement Project;
2. That the Project is planned and located in a manner which will be most compatible with the greatest public good and the least private injury;
3. That the acquisition by the City of Oakland of the Property described and depicted in Exhibits A-1 and A-2 attached to this Resolution for the construction of the roadway improvements at High Street is necessary for the Project; and
4. That the City made an offer, as required by Section 7267.2 of the California Government Code, to the owners of record to purchase the Property, but that the owners did not accept this offer.

BE IT FURTHER RESOLVED: That the City Council has independently reviewed and considered the environmental analysis for the Project, including without limitation the 2012 Addendum and the 2001 MND, and in the exercise of its independent judgment and based on the substantial evidence in the record, hereby finds and determines, that acquisition of the Property for the Project and completion of the Project as anticipated will have no significant environmental impacts and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2001 MND was adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 2001 MND, or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2001 MND, and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the Resolutions of Necessity, the City can rely on the previously adopted 2001 MND, as documented in the 2012 Addendum.

BE IT FURTHER RESOLVED: The City Council hereby adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program. Adoption of this Program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of the Public Resources Code. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

BE IT FURTHER RESOLVED: The Environmental Review Officer is directed to file a Notice of Determination with the appropriate agencies.

BE IT FURTHER RESOLVED: The City of Oakland Real Estate Division is certified as a Level 3 Qualified Local Agency, allowing the City's Real Estate Division to acquire the required Project property rights with funds provided by the California Department of Transportation.

BE IT FURTHER RESOLVED: The City has authority under California Government Code Sections 37350, 37350.5, 37351, 37353, 40401 and 40404 to acquire the Property for the Project.

BE IT FURTHER RESOLVED: That funds for the acquisition of these property rights have previously been budgeted and appropriated by the City and are available from the Grant Fund State of California Department of Transportation (2140), 42nd Avenue High Street Right of Way Project (C98530), Acquisition of Right of Way Account (57111), and Capital Improvement Project Transportation Services Organization (92246).

BE IT FURTHER RESOLVED: The City of Oakland shall acquire the Property for the Project.

BE IT FURTHER RESOLVED: The City Attorney and Real Estate Division may continue negotiations with the owners of record for the Property in an effort to acquire the Property for the Project in the most just and expeditious manner possible.

BE IT FURTHER RESOLVED: The City Attorney or its designee is hereby authorized (a) to take all steps necessary to commence legal proceedings, in a court of competent jurisdiction, in the name of the City of Oakland, (b) to acquire the Property by eminent domain, (c) to deposit the total sum of probable compensation fixed by appraisal with the State Treasurer in the State Condemnation Deposits Fund, as provided by statute; (d) to seek and obtain an Order for Possession of said property rights in accordance with the provisions of the eminent domain law, and (e) to bring such proceedings to final judgment should further negotiations fail to produce a settlement acceptable to the owners of record and to the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A-1

8127.003

02/03/10

CES

EXHIBIT "A"

DESCRIPTION OF FEE TAKE

Being a portion of the Lands of Equilon Enterprises, L.L.C. as described as Tract 21 in that certain Corporate Grant Deed recorded on July 17, 1998, in Instrument No. 98252223, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

AREA 1

Beginning at the most westerly corner of Tract 21 as described in said Corporate Grant Deed; thence from said **POINT OF BEGINNING** coincident with said westerly line of Tract 21, North $47^{\circ}29'58''$ East a distance of 199.99 feet to a point of curvature; thence from a radial line which bears North $31^{\circ}08'17''$ West, 33.30 feet along the arc of a non-tangent 67.00 foot radius curve to the right through a central angle of $28^{\circ}28'44''$ to a point hereinafter described as Point "A"; thence leaving said westerly line of Tract 21, from a radial line which bears North $14^{\circ}04'53''$ West, 18.96 feet along the arc of a non-tangent 38.25 foot radius curve to the left through a central angle of $28^{\circ}24'29''$; thence North $47^{\circ}30'38''$ East a distance of 162.32 feet; thence North $51^{\circ}26'35''$ East a distance of 46.75 feet; thence North $03^{\circ}44'08''$ East a distance of 3.53 feet to the southwesterly line of said Tract 21; thence coincident with said southwesterly line of Tract 21, North $42^{\circ}30'02''$ West a distance of 8.83 feet to the Point of Beginning.

Containing 1,989 square feet of land, more or less.

AREA 2

Commencing at said Point "A"; thence coincident with the westerly line of said Tract 21, from a radial line which bears North $02^{\circ}39'33''$ West, 0.41 feet along the arc of a non-tangent 67.00 foot radius curve to the right through a central angle of $00^{\circ}20'48''$ to the True Point of Beginning; thence from said **TRUE POINT OF BEGINNING** coincident with said westerly line of said Tract 21, from a radial line which bears North $02^{\circ}18'45''$ West, 10.66 feet along the arc of a non-tangent 67.00 foot radius curve to the right through a central angle of $09^{\circ}06'58''$ to the intersection with the south line of that certain Highway Easement Deed granted to the State of California on April 11, 2006 in Instrument No. 2006142702, Official Records of Alameda County; thence coincident with said south line of the Highway Easement Deed, from a radial line which bears North $27^{\circ}19'51''$ East, 10.16 feet along the arc of a non-tangent 228.35 foot radius curve to the right through a central angle of $02^{\circ}32'59''$; thence leaving said south line of the Highway Easement Deed, North $74^{\circ}53'19''$ West a distance of 20.26 feet to the Point of Beginning.

Containing 26 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.


Exhibit A-1

8127.003
02/03/10
CES

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

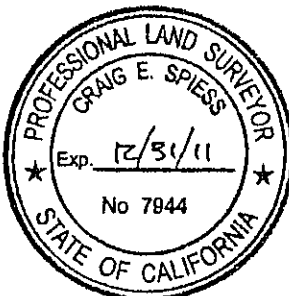
This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

APN: 034-2295-001-3



Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011

Date: 2/2/10



PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

Exhibit A-1

EXHIBIT A-1

PLAT TO ACCOMPANY
DESCRIPTION

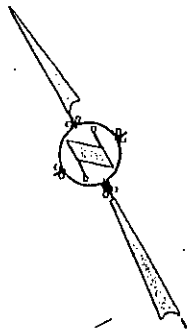
42ND AVENUE & HIGH STREET
FEE TAKE

600 HIGH STREET
EQUILON ENTERPRISES

APN: 034-2295-001-3

CITY OF OAKLAND COUNTY OF ALAMEDA

STATE OF CALIFORNIA



R=67.00'
00°20'48"
L=0.41'

P.O.B. AREA 2
R=67.00' 09°06'58" L=10.66'
R=228.35' 02°32'59" L=10.16'

R=67.00'
28°28'44"
L=33.30'
POINT "A"

N27°19'51"E (R)

N74°53'19"W 20.26'

R=38.25'
28°24'29"
L=18.96'

033-2203-002

HIGH STREET

APN
034-2295-001-3

N31°08'17"W (R)
N47°29'58"E 199.99'
S47°30'38"W 162.32'

P.O.B. AREA 1

S51°26'35"W 46.75'
S03°44'08"W 3.53'

N42°30'02"W 8.83'

JENSEN STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'



WOOD RODGERS
ENGINEERING - MAPPING - PLANNING - SURVEYING

3301 C St., Bldg. 100-B Sacramento, CA 95816
Tel 916.341.7760 Fax 916.341.7767

Exhibit A-2

8127.003

12/15/09

CES

EXHIBIT "A"

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

Being a portion of the Lands of Equilon Enterprises, L.L.C. as described as Tract 21 in that certain Corporate Grant Deed recorded on July 17, 1998, in Instrument No. 9S252223, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

Commencing at the most westerly corner of Tract 21 as described in said Corporate Grant Deed; thence coincident with the southwesterly line of said Tract 21, South $42^{\circ}30'02''$ East a distance of 8.83 feet to the True Point of Beginning; thence from said **TRUE POINT OF BEGINNING** leaving said southwesterly line of said Tract 21, North $03^{\circ}44'08''$ East a distance of 3.53 feet; thence North $51^{\circ}26'35''$ East a distance of 46.75 feet; thence North $47^{\circ}30'38''$ East a distance of 162.32 feet to a point of curvature; thence 18.96 feet along the arc of a tangent 38.25 foot radius curve to the right through a central angle of $28^{\circ}24'29''$ to the northerly line of said Tract 21; thence coincident with said northerly line of Tract 21, from a radial line which bears North $02^{\circ}39'33''$ West, 0.41 feet along the arc of a non-tangent 67.00 foot radius curve to the right through a central angle of $00^{\circ}20'48''$; thence leaving said northerly line of Tract 21, South $74^{\circ}53'19''$ East a distance of 20.26 feet to the south line of that certain Highway Easement Deed granted to the State of California on April 11, 2006 in Instrument No. 2006142702, Official Records of Alameda County and being a point of curvature; thence coincident with said south line of the Highway Easement Deed, thence from a radial line which bears North $29^{\circ}52'50''$ East, 26.75 feet along the arc of a non-tangent 228.35 foot radius curve to the right through a central angle of $06^{\circ}42'43''$; thence leaving said south line of the Highway Easement Deed, South $35^{\circ}39'47''$ West a distance of 3.47 feet to a point of curvature; thence from a radial line which bears North $36^{\circ}54'52''$ East, 13.56 feet along the arc of a non-tangent 228.92 foot radius curve to the left through a central angle of $03^{\circ}23'41''$; thence North $74^{\circ}53'19''$ West a distance of 30.02 feet to a point of curvature; thence from a radial line which bears North $16^{\circ}47'32''$ West, 14.06 feet along the arc of a non-tangent 31.35 foot radius curve to the left through a central angle of $25^{\circ}41'50''$; thence South $47^{\circ}30'38''$ West a distance of 162.56 feet; thence South $51^{\circ}26'35''$ West a distance of 43.94 feet; thence South $03^{\circ}44'08''$ West a distance of 7.09 feet to the southwesterly line of said Tract 21; thence coincident with said southwesterly line of Tract 21, North $42^{\circ}30'02''$ West a distance of 9.55 feet to the Point of Beginning.

Containing 1,829 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

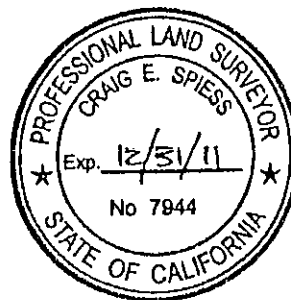
Exhibit A-2

8127.003
12/15/09
CES

APN: 034-2295-001-3



Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011



Date: 2/2/10

PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

Exhibit A-2

EXHIBIT A-1

PLAN TO ACCOMPANY
DESCRIPTION

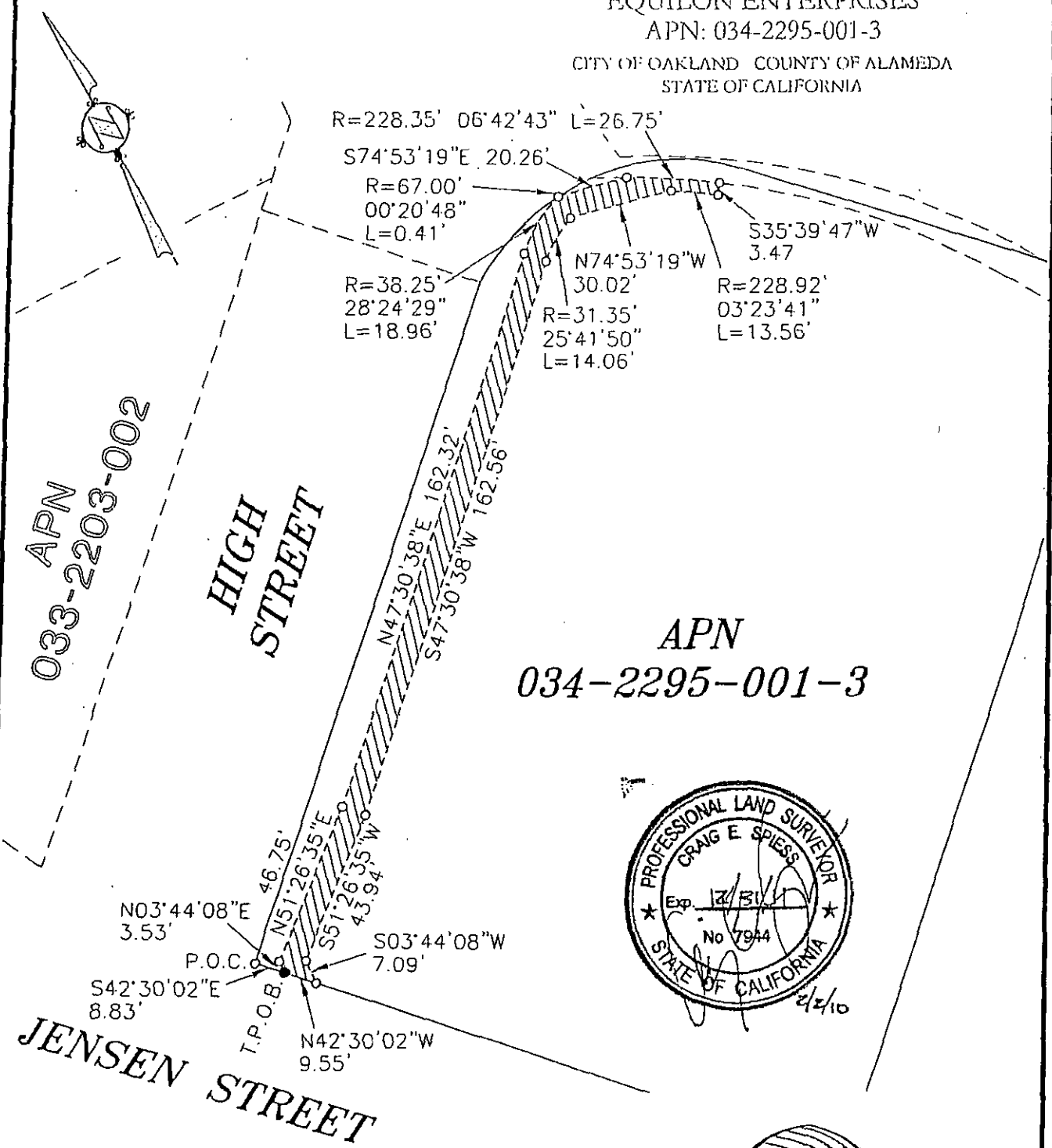
42ND AVENUE & HIGH STREET
TEMPORARY CONSTRUCTION EASEMENT

600 HIGH STREET

EQUILON ENTERPRISES

APN: 034-2295-001-3

CITY OF OAKLAND COUNTY OF ALAMEDA
STATE OF CALIFORNIA



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'

WOOD RODGERS
 ENGINEERING - MAPPING - PLANNING - SURVEYING
 3301 C St., Bldg. 100-B Tel 916.341.7760
 Sacramento, CA 95816 Fax 916.341.7767

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2012 JAN 11 PM 2:28
RESOLUTION No. _____ C.M.S.
Introduced by Councilmember _____

A RESOLUTION OF NECESSITY DECLARING PROPERTY INTERESTS AT 4200 ALAMEDA AVENUE (PORTIONS OF APNs 033-2203-006-00 AND 033-2203-004-02) NECESSARY FOR PUBLIC USE IN THE 42ND AVENUE AND HIGH STREET ACCESS IMPROVEMENT PROJECT AND AUTHORIZING THE CITY TO INITIATE CONDEMNATION PROCEEDINGS FOR THE ACQUISITION OF THOSE PROPERTY INTERESTS.

WHEREAS, The City of Oakland, lead agency for this project, has received authorization from the Regional Transportation Improvement Program to proceed with the 42nd Avenue/High Street Access Improvement Project (the "Project") in Alameda County. The Project objective is to provide circulation improvements for local roadways at the I-880/SR-77 (42nd Avenue) interchange. Specifically, circulation and intersection capacity improvements are proposed for 42nd Avenue (SR-77), High Street, and Alameda Avenue, and local street realignments are proposed for Howard Street, Oakport Street, and Jensen Street; and

WHEREAS, The proposed project will improve access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Additionally, the proposed improvements will relieve local traffic congestion, freeway ramp backups and promote business and economic development opportunities for both the Port of Oakland and the City of Oakland; and

WHEREAS, The Project goal is to extend 42nd Avenue to the south from I-880 to Alameda Avenue; to extend Jensen Street to the west connecting High Street to the newly created 42nd Avenue; and to expand High Street to include dual left-turn lanes in both directions at the frontage road intersections of Oakport Street and Coliseum Way; and

WHEREAS, On October 2, 2001, the City Council adopted a Mitigated Negative Declaration (Resolution No. 76735 C.M.S.) prepared for the Project under the requirements of the California Environmental Quality Act (CEQA), showing that the Project would have no significant environmental impacts (the "2001 MND");

WHEREAS, The City has prepared an Addendum to 2001 MND for the Project, pursuant to CEQA (the "2012 Addendum"), which shows that the City can rely on the previously adopted Mitigated Negative Declaration and that no further environmental review is required; and

WHEREAS, On November 9, 2010 the City council adopted Ordinance No. 13044 C.M.S. authorizing negotiation by City staff members of voluntary agreements to acquire the Property Rights for the Project; and

WHEREAS, Construction of the Project as planned and designed will require a permanent easement over ±1,062 square feet on parcel 033-2203-006-00 and a second permanent easement over ±3,489 square feet on parcel 033-2203-004-02; and

WHEREAS, Construction of the Project as planned and designed also will require temporary construction easements of ±42 square feet from Parcel 033-2203-006-00 and ±418 square feet from Parcel 033-2203-004-02, lasting for a term of at least three (3) years or until the project is completed; and

WHEREAS, These permanent and temporary construction easements (hereafter, the "Property") are described and depicted more specifically on Exhibits B-1, B-2, B-3 and B-4, respectively; and

WHEREAS, The City commissioned an appraisal of the Property, which has since been updated, reviewed and approved by a qualified review appraiser; and

WHEREAS, The City has made an offer to purchase the Property from its owners of record, but the owners have not accepted the City's offer; and

WHEREAS, The City has provided notice in the manner specified in Section 1245.235 of the California Code of Civil Procedure to the persons whose property interests are to be acquired pursuant to this resolution, and whose names and addresses appear on the last equalized county assessment roll for the Property, said persons were given an opportunity to appear and be heard on the following matters referred to in Section 1240.030 of the California Code of Civil Procedure:

- a) Whether the public interest and necessity require the Project;
- b) Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether the acquisition of the Property is necessary for the Project; and
- d) Whether the offer required by Section 7267.2 of the California Government Code has been made to the owners of record.

WHEREAS, The City is authorized by the Constitution and statutes of the State of California, including without limitation by sections 37350, 37350.5, 37351, 37353, 40401 and 40404 of the Government Code, to acquire real property by eminent domain for public purposes including improving and widening streets within the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakland that it hereby finds, determines, and declares as follows, on the basis of the evidence presented orally and in writing at the hearing at which the adoption of this resolution was considered:

1. That the public interest and necessity require the 42nd Avenue/High Street Access Improvement Project;
2. That the Project is planned and located in a manner which will be most compatible with the greatest public good and the least private injury;
3. That the acquisition by the City of Oakland of the Property described and depicted in Exhibits B-1, B-2, B-3, and B-4 to this Resolution for the construction of the roadway improvements at High Street is necessary for the Project; and

4. That the City made an offer, as required by Section 7267.2 of the California Government Code, to the owners of record to purchase the Property, but that the owners did not accept this offer.

BE IT FURTHER RESOLVED: That the City Council has independently reviewed and considered the environmental analysis for the Project, including without limitation the 2012 Addendum and the 2001 MND, and in the exercise of its independent judgment and based on the substantial evidence in the record, hereby finds and determines, that acquisition of the Property for the Project and completion of the Project as anticipated will have no significant environmental impacts and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2001 MND was adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 2001 MND, or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2001 MND, and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the Resolutions of Necessity, the City can rely on the previously adopted 2001 MND, as documented in the 2012 Addendum.

BE IT FURTHER RESOLVED: The City Council hereby adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program. Adoption of this Program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of the Public Resources Code. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

BE IT FURTHER RESOLVED: The Environmental Review Officer is directed to file a Notice of Determination with the appropriate agencies.

BE IT FURTHER RESOLVED: The City of Oakland Real Estate Division is certified as a Level 3 Qualified Local Agency, allowing the City's Real Estate Division to acquire the required Project property rights with funds provided by the California Department of Transportation.

BE IT FURTHER RESOLVED: The City has authority under California Government Code Sections 37350, 37350.5, 37351, 37353, 40401 and 40404 to acquire the Property for the Project.

BE IT FURTHER RESOLVED: That funds for the acquisition of these property rights have previously been budgeted and appropriated by the City and are available from the Grant Fund

State of California Department of Transportation (2140), 42nd Avenue High Street Right of Way Project (C98530), Acquisition of Right of Way Account (57111), and Capital Improvement Project Transportation Services Organization (92246).

BE IT FURTHER RESOLVED: The City of Oakland shall acquire the Property for the Project.

BE IT FURTHER RESOLVED: The City Attorney and Real Estate Division may continue negotiations with the owners of record for the Property in an effort to acquire the Property for the Project in the most just and expeditious manner possible.

BE IT FURTHER RESOLVED: The City Attorney or its designee is hereby authorized (a) to take all steps necessary to commence legal proceedings, in a court of competent jurisdiction, in the name of the City of Oakland, (b) to acquire the Property by eminent domain, (c) to deposit the total sum of probable compensation fixed by appraisal with the State Treasurer in the State Condemnation Deposits Fund, as provided by statute; (d) to seek and obtain an Order for Possession of said property rights in accordance with the provisions of the eminent domain law, and (e) to bring such proceedings to final judgment should further negotiations fail to produce a settlement acceptable to the owners of record and to the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit B-1

8127.003
01/27/10
CES

EXHIBIT "A"

DESCRIPTION OF EASEMENT

Being a portion of the Lands of Lanrence C. and Diane M. Websler as described in that certain Corporation Grant Deed recorded on January 4, 1984, in Instrument No. 84-001218, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

Beginning at the most southerly corner of the Corporation Grant Deed recorded April 15, 1997, in Instrument No. 97095946, Official Records of Alameda County, thence from said POINT OF BEGINNING coincident with the southerly line of said Corporation Grant Deed, South 87°43'42" East a distance of 101.29 feet; thence leaving said southerly line of said Corporation Grant Deed, South 42°26'48" East a distance of 14.07 feet to the southerly line of said Corporation Grant Deed recorded in Instrument No. 84-001218, Official Records of Alameda County; thence coincident with the aforementioned southerly line, North 87°43'42" West a distance of 111.19 feet to the westerly line of said aforementioned Corporation Grant Deed; thence coincident with said westerly line of said Corporation Grant Deed, North 02°16'18" East a distance of 10.00 feet to the Point of Beginning.

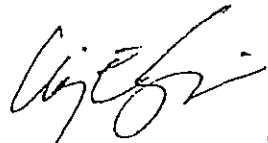
Containing 1,062 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

APN: 033-2203-006



Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011

Date: 1/27/10



PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

Exhibit B-1

EXHIBIT A-1

PLAT TO ACCOMPANY
DESCRIPTION

42ND AVENUE & HIGH STREET
EASEMENT
4200 ALAMEDA AVENUE
LAURENCE C. & DIANE M. WEBSTER
APN: 033-2203-006
CITY OF OAKLAND COUNTY OF ALAMEDA
STATE OF CALIFORNIA

APN:
033-2250-018-3

APN:
033-2203-004-2



N02°16'18"E
10.00'

P.O.B.

S87°43'42"E 101.29'
N87°43'42"W 111.19'

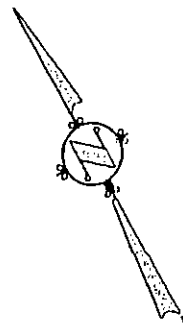
S42°26'48"E
14.07'

APN: 033-2203-006

ALAMEDA AVENUE

APN:
033-2250
-013-1

HOWARD
STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'



WOOD RODGERS
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3301 C St., Bldg. 100-B Tel 916.341.7760
Sacramento, CA 95816 Fax 916.341.7767

Exhibit B-2

8127.003
01/27/10
CES

EXHIBIT "A"

DESCRIPTION OF EASEMENT

Being a portion of the Lands of Laurence C. and Diane M. Webster as described in that certain Corporation Grant Deed recorded on January 4, 1984, in instrument No. 84-001218, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

Beginning at the most southwesterly corner of Parcel 1 of said Corporation Grant Deed; thence from said POINT OF BEGINNING coincident with easterly line of said Corporation Grant Deed, North 02°16'18" East a distance of 19.73 feet to the northwesterly line of said Corporation Grant Deed; thence leaving said easterly line, coincident with said northwesterly line of said Corporation Grant Deed, North 60°27'57" East a distance of 93.32 feet; thence leaving said northwesterly line of said Corporation Grant Deed, South 45°04'03" West a distance of 1.06 feet to a point of curvature; thence from a radial line which bears North 43°22'59" West, 52.01 feet along the arc of a non-tangent 33.46 foot radius curve to the left through a central angle of 89°03'49"; thence South 42°26'48" East a distance of 29.92 feet to the southerly line of said Corporation Grant Deed; thence coincident with said southerly line of Corporation Grant Deed, North 87°43'42" West a distance of 101.29 feet to the Point of Beginning.

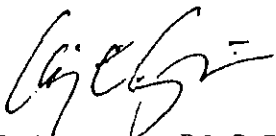
Containing 3,489 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

APN: 033-2203-004-2


Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011

Date: 1/27/10



PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

Exhibit B-2

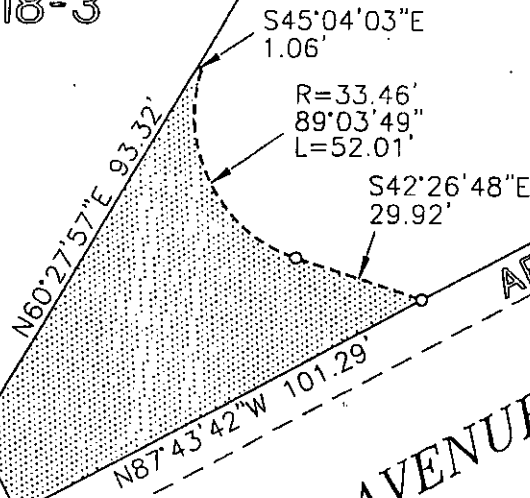
EXHIBIT A-1

PLAT TO ACCOMPANY
DESCRIPTION

42ND AVENUE & HIGH STREET
EASEMENT
4200 ALAMEDA AVENUE
LAURENCE C. & DIANE M. WEBSTER
APN: 033-2203-004-2
CITY OF OAKLAND COUNTY OF ALAMEDA
STATE OF CALIFORNIA

APN:
033-2250-018-3

APN:
033-2203-004-2



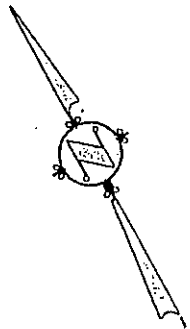
APN: 033-2203-006

N02°16'18\"E
19.73'
P.O.B.

ALAMEDA AVENUE

APN:
033-2250
-013-1

HOWARD STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'



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Sacramento, CA 95816 Fax 916.341.7767

Exhibit B-3

8127.003
01/27/10
CES

EXHIBIT "A"

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

Being a portion of the Lands of Laurence C. and Diane M. Websler as described in that certain Corporation Grant Deed recorded on January 4, 1984, in instrument No. 84-001218, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

Beginning at a point on the southerly line of Parcel 1 as described in said Corporation Grant Deed from which the most southwesterly corner of said Parcel 1 bears North 87°43'42" West a distance of 101.29 feet; thence from said **POINT OF BEGINNING** leaving said southerly line of said Parcel 1, North 42°26'48" West a distance of 29.92 feet to a point of curvature; thence 52.01 feet along the arc of a tangent 33.46 foot radius curve to the right through a central angle of 89°03'49"; thence North 45°04'03" West a distance of 1.06 feet to the northwesterly line of said Corporation Grant Deed; thence coincident with said northwesterly line of the Corporation Grant Deed, North 60°27'57" East a distance of 31.35 feet; thence leaving said northwesterly line of the Corporation Grant Deed, South 44°55'56" West a distance of 46.97 feet to a point of curvature; thence from a radial line which bears North 76°12'30" West, 29.95 feet along the arc of a non-tangent 30.51 foot radius curve to the left through a central angle of 56°14'18"; thence South 42°26'48" East a distance of 32.84 feet to the southerly line of Parcel 1; thence coincident with said southerly line of Parcel 1, North 87°43'42" West a distance of 4.16 feet to the Point of Beginning.

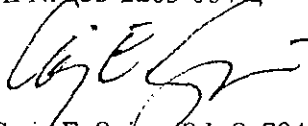
Containing 418 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a part hereof.

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

APN: 033-2203-004-2


Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011



Date: 2/2/10

PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

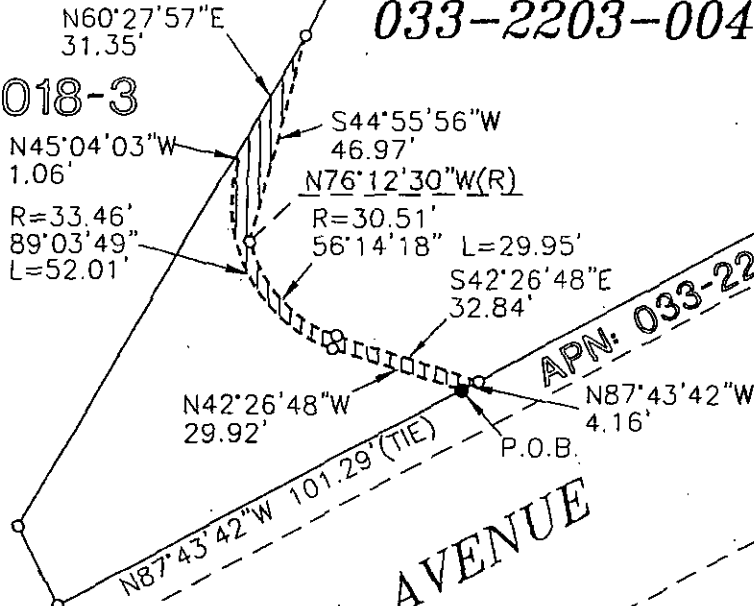
Exhibit B-3

EXHIBIT A-1
PLAT TO ACCOMPANY
DESCRIPTION

42ND AVENUE & HIGH STREET
TEMPORARY CONSTRUCTION EASEMENT
4200 ALAMEDA AVENUE
LAURENCE C. & DIANE M. WEBSTER
APN: 033-2203-004-2
CITY OF OAKLAND COUNTY OF ALAMEDA
STATE OF CALIFORNIA

APN:
033-2250-018-3

APN:
033-2203-004-2

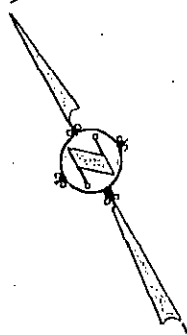


APN: 033-2203-006

APN:
033-2250
-013-1

ALAMEDA AVENUE

HOWARD STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'

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3301 C St., Bldg. 100-B Tel 916.341.7780
Sacramento, CA 95816 Fax 916.341.7707

Exhibit B-4

8127.003
03/16/10
GJM

EXHIBIT "A"

**DESCRIPTION OF
TEMPORARY CONSTRUCTION EASEMENT**

Being a portion of land, as described in that certain Corporation Grant Deed recorded on January 04, 1984, in Instrument No. 84-001218, Official Records of Alameda County, situate in the City of Oakland, County of Alameda, State of California, said property being more particularly described as follows:

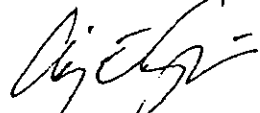
Commencing at the most southerly corner of the Corporation Grant recorded April 04, 1997, in Instrument No. 97095946, said County Records; thence from said **POINT OF COMMENCEMENT**, coincident with the southerly line of said Corporation Grant Deed, South 87°43'42" East, 101.29 feet to the **TRUE POINT OF BEGINNING**; thence from said **TRUE POINT OF BEGINNING**, continuing along said southerly line, South 87°43'42" East a distance of 4.16 feet; thence leaving said southeasterly line, South 42°26'48" East a distance of 14.07 feet to the southerly line of the aforementioned Corporation Grant Deed, Instrument No. 84-001218; thence coincident with said southerly line, North 87°43'42" West a distance of 4.16 feet; thence leaving said southerly line, North 42°26'48" West a distance of 14.07 feet to the True Point of Beginning. Containing 42 square feet of land, more or less.

See Exhibit "A-1", plat to accompany description, attached hereto and made a pari hereof.

The bearings and distances are based on the California Coordinate System of 1983 Zone 3. Distances are grid distances. Multiply the distances by 1.0000667 to obtain ground level distances.

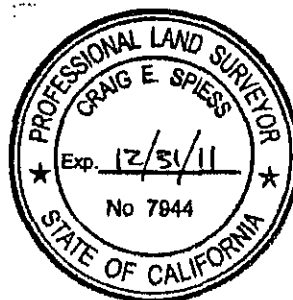
This real property description was prepared by me, or under my direction, pursuant to Section 8729 (2) of the California Professional Land Surveyors Act.

APN: 033-2203-006



Craig E. Spiess P.L.S. 7944
Expires: December 31, 2011

Date: 3/26/10



PREPARED BY WOOD RODGERS, INC
SACRAMENTO, CALIFORNIA

Exhibit B-4

EXHIBIT A-1

PLAT TO ACCOMPANY
DESCRIPTION

42ND AVENUE & HIGH STREET
TEMPORARY CONSTRUCTION EASEMENT

4200 ALAMEDA AVENUE
LAURENCE C. & DIANE M. WEBSTER

APN: 033-2203-006

CITY OF OAKLAND COUNTY OF ALAMEDA
STATE OF CALIFORNIA

APN:

033-2203-004-2

APN:

033-2250-018-3



S87°43'42"E
4.16'

P.O.B.

S42°26'48"E
14.07'

N87°43'42"W
4.16'

P.O.C.

S87°43'42"E 101.29' (TIE)

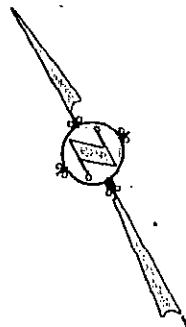
N42°26'48"W
14.07'

ALAMEDA AVENUE

APN:

033-2250-013-1

HOWARD STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'



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2012 JAN 11 PM 2:28

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

**A RESOLUTION OF NECESSITY DECLARING PROPERTY INTEREST AT
JENSEN STREET (BETWEEN APNs 033-2250-013-01 and 033-2203-002)
NECESSARY FOR PUBLIC USE IN THE 42ND AVENUE AND HIGH
STREET ACCESS IMPROVEMENT PROJECT AND AUTHORIZING THE
CITY TO INITIATE CONDEMNATION PROCEEDINGS FOR THE
ACQUISITION OF THOSE PROPERTY INTERESTS.**

WHEREAS, The City of Oakland, lead agency for this project, has received authorization from the Regional Transportation Improvement Program to proceed with the 42nd Avenue/High Street Access Improvement Project (the "Project") in Alameda County. The Project objective is to provide circulation improvements for local roadways at the I-880/SR-77 (42nd Avenue) interchange. Specifically, circulation and intersection capacity improvements are proposed for 42nd Avenue (SR-77), High Street, and Alameda Avenue, and local street realignments are proposed for Howard Street, Oakport Street, and Jensen Street; and

WHEREAS, The proposed project will improve access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Additionally, the proposed improvements will relieve local traffic congestion, freeway ramp backups and promote business and economic development opportunities for both the Port of Oakland and the City of Oakland; and

WHEREAS, The Project goal is to extend 42nd Avenue to the south from I-880 to Alameda Avenue; to extend Jensen Street to the west connecting High Street to the newly created 42nd Avenue; and to expand High Street to include dual left-turn lanes in both directions at the frontage road intersections of Oakport Street and Coliseum Way; and

WHEREAS, On October 2, 2001, the City Council adopted a Mitigated Negative Declaration (Resolution No. 76735 C.M.S.) prepared for the Project under the requirements of the California Environmental Quality Act (CEQA), showing that the Project would have no significant environmental impacts (the "2001 MND"); and

WHEREAS, The City has prepared an Addendum to the 2001 MND for the Project, pursuant to CEQA (the "2012 Addendum"), which shows that the City can rely on the previously adopted Mitigated Negative Declaration and that no further environmental review is required; and

WHEREAS, On November 9, 2010, the City council adopted Ordinance No. 13044 C.M.S. authorizing negotiation by City staff members of voluntary agreements to acquire the Property Rights for the Project; and

WHEREAS, Construction of the Project as planned and designed will require a fee interest of ±7,400 square feet between parcels 033-2250-013-01 and 033-2203-002; and

WHEREAS, The fee interest (hereafter, the "Property") is described and depicted more specifically on Exhibit C-1 to this Resolution; and

WHEREAS, The City commissioned an appraisal of the Property, which has since been updated, reviewed and approved by a qualified review appraiser; and

WHEREAS, The City has made a diligent, good faith effort to locate the Owner of Record for the Property by engaging the title insurer for the Project to perform a title search of the chain of title for the Property. Public records along with the title search revealed that the Property was last owned by the Leona Chemical Company; and

WHEREAS, The City initiated a business entity records search with the California Secretary of State on May 25, 2011, to locate the Leona Chemical Company and discovered that the company had been dissolved in 1933. Subsequent research did not reveal who may have succeeded in any unrecorded transaction to the Leona Chemical Company's undistributed assets; and

WHEREAS, Because the City was unsuccessful in locating the Owner of Record and the successor to the Leona Chemical Company after performing a reasonable, diligent search pursuant to Section 7267.2 of the California Government Code, the City has not made any offer to purchase the Property; and

WHEREAS, The City has not provided notice in the manner specified in Section 1245.235 of the California Code of Civil Procedure to the persons whose property interests are to be acquired pursuant to this Resolution, and whose names and addresses appear on the last equalized county assessment roll for the Property, because such persons could not be identified nor located after a reasonable, diligent search by the City; and

WHEREAS, The City effected service on the owners of the parcel by publication and posting at the Property such that the owners of record were given an opportunity to appear and be heard on the following matters referred to in Section 1240.030 of the California Code of Civil Procedure:

- a) Whether the public interest and necessity require the Project;
- b) Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether the acquisition of the Property is necessary for the Project; and
- d) Whether the offer required by Section 7267.2 of the California Government Code has been made to the owners of record, or whether the owners could not be found.

WHEREAS, The City is authorized by the Constitution and statutes of the State of California, including, without limitation, sections 37350, 37350.5, 37351, 37353, 40401 and 40404 of the Government Code, to acquire real property by eminent domain for public purposes including improving and widening streets within the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakland that it hereby finds, determines, and declares as follows, on the basis of the evidence presented orally and in writing at the hearing at which the adoption of this resolution was considered:

1. That the public interest and necessity require the 42nd Avenue/High Street Access Improvement Project;
2. That the Project is planned and located in a manner which will be most compatible with the greatest public good and the least private injury;
3. That the acquisition by the City of Oakland of the Property described and depicted in Exhibit C-1 attached to this Resolution for the construction of the roadway improvements at High Street is necessary for the Project; and
4. That the City has not made an offer to the owners of record to purchase the Property, because the owner could not be located despite the City's reasonable, diligent search to locate said owner.

BE IT FURTHER RESOLVED:

That the City Council has independently reviewed and considered the environmental analysis for the Project, including without limitation the 2012 Addendum and the 2001 MND, and in the exercise of its independent judgment and based on the substantial evidence in the record, hereby finds and determines, that acquisition of the Property for the Project and completion of the Project as anticipated will have no significant environmental impacts and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2001 MND was adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 2001 MND, or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2001 MND, and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the Resolutions of Necessity, the City can rely on the previously adopted 2001 MND, as documented in the 2012 Addendum.

BE IT FURTHER RESOLVED: The City Council hereby adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program. Adoption of this Program will

constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of the Public Resources Code. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

BE IT FURTHER RESOLVED: The Environmental Review Officer is directed to file a Notice of Determination with the appropriate agencies.

BE IT FURTHER RESOLVED: The City of Oakland Real Estate Division is certified as a Level 3 Qualified Local Agency, allowing the City's Real Estate Division to acquire the required Project property rights with funds provided by the California Department of Transportation.

BE IT FURTHER RESOLVED: The City has authority under California Government Code Sections 37350, 37350.5, 37351, 37353, 40401 and 40404 to acquire the Property for the Project.

BE IT FURTHER RESOLVED: That funds for the acquisition of these property rights have previously been budgeted and appropriated by the City and are available from the Grant Fund State of California Department of Transportation (2140), 42nd Avenue High Street Right of Way Project (C98530), Acquisition of Right of Way Account (57111), and Capital Improvement Project Transportation Services Organization (92246).

BE IT FURTHER RESOLVED: The City of Oakland shall acquire the Property for the Project.

BE IT FURTHER RESOLVED: The City Attorney and Real Estate Division may continue negotiations with the owners of record for the Property, in the event said owners are located, in an effort to acquire the Property for the Project in the most just and expeditious manner possible.

BE IT FURTHER RESOLVED: The City Attorney or its designee is hereby authorized (a) to take all steps necessary to commence legal proceedings, in a court of competent jurisdiction, in the name of the City of Oakland, (b) to acquire the Property by eminent domain, (c) to deposit the total sum of probable compensation fixed by appraisal with the State Treasurer in the State Condemnation Deposits Fund, as provided by statute; (d) to seek and obtain an Order for Possession of said property rights in accordance with the provisions of the eminent domain law, and (e) to bring such proceedings to final judgment should any further negotiations fail to produce a settlement acceptable to the owners of record and to the City.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit C-1

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

Commencing at a point in the Northwesterly line of High Street, distant thereon South $45^{\circ} 40'$ West Eight Hundred Seventy-One and $41/100$ (871.41) feet from the Southerly line of Lloyd Avenue, as said Lloyd Avenue is laid down, delineated and so designated upon that certain Map entitled "Map of the Subdivisions of the Northeast Portion of the Sather Tract" etc., filed December 6th, 1902, in the Office of the County Recorder of said County of Alameda; and running thence along said Northwesterly line of said High Street North $45^{\circ} 40'$ East Forty-One and $16/100$ (41.16) feet; thence Northerly on the arc of a circle of Four Hundred Fifty-Seven, and $80/100$ (457.80) feet radius, deflecting to the right or Eastward, a distance of One Hundred Fifty-Three and $41/100$ (153.41) feet to a point in the Southerly boundary line of the right of way of Central Pacific Railroad Company, distant thereon North $89^{\circ} 29'$ West One Hundred Ninety-Six and $85/100$ (196.85) feet from the point of intersection of said Southerly boundary line of said right of way with said Northwesterly line of said High Street; thence along said Southerly boundary line of said right of way North $89^{\circ} 29'$ West Forty and $64/100$ (40.64) feet, and thence Southerly on the arc of a circle of Four Hundred Ninety-Seven and $80/100$ (497.80) feet radius, deflecting to the left or Eastward and concentric with said arc of Four Hundred Fifty-Seven and $80/100$ (457.80) feet radius, a distance of One Hundred Eighty-five and $6/100$ (186.06) feet to the point of commencement.

Being a portion of that certain piece or parcel of land conveyed by that certain Deed from Josephine F. Bruguere to the Bruguere Company, a corporation dated May 25th, 1903, and recorded in Liber 938 of Deeds, at Page 389, of the Office of the County Recorder of said County of Alameda.

Redrawn: 12-24-57
Contracted: 1-25-58
1-25-58
1-25-58
1-25-58

NOTICE... This is neither a plat nor a survey. It is furnished merely as a convenience to aid you in locating the land indicated hereon with reference to streets and other land. No liability is assumed by reason of any reliance hereon.

