

2012 JAN 11 PM 2:28

OAKLAND CITY COUNCIL


City Attorney

RESOLUTION No. 83711 -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.

FEB 7 2012

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

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.

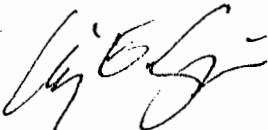
Exhibit A-1

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

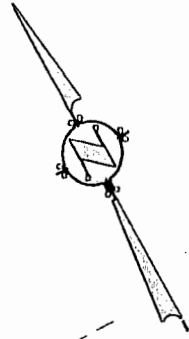
Exhibit A-1

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



$R=67.00'$ P.O.B. AREA 2
 $00'20'48''$ $R=67.00'$ $09'06'58''$ $L=10.66'$
 $L=0.41'$ $R=228.35'$ $02'32'59''$ $L=10.16'$
 $R=67.00'$
 $28'28'44''$
 $L=33.30'$
 POINT "A"

$N27'19'51''E (R)$
 $N74'53'19''W$ 20.26'
 $N14'04'53''W$
 $R=38.25'$ $R=67.00'$
 $28'24'29''$ $R=38.25'$
 $L=18.96'$

033-2203-002
APN

HIGH STREET

APN
034-2295-001-3

P.O.B. AREA 1
 $N42'30'02''W$ 8.83'
 $S51'26'35''W$ 46.75'
 $S03'44'08''W$ 3.53'

JENSEN STREET



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

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. 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:

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.

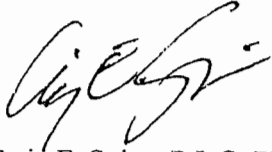
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Exhibit A-2

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

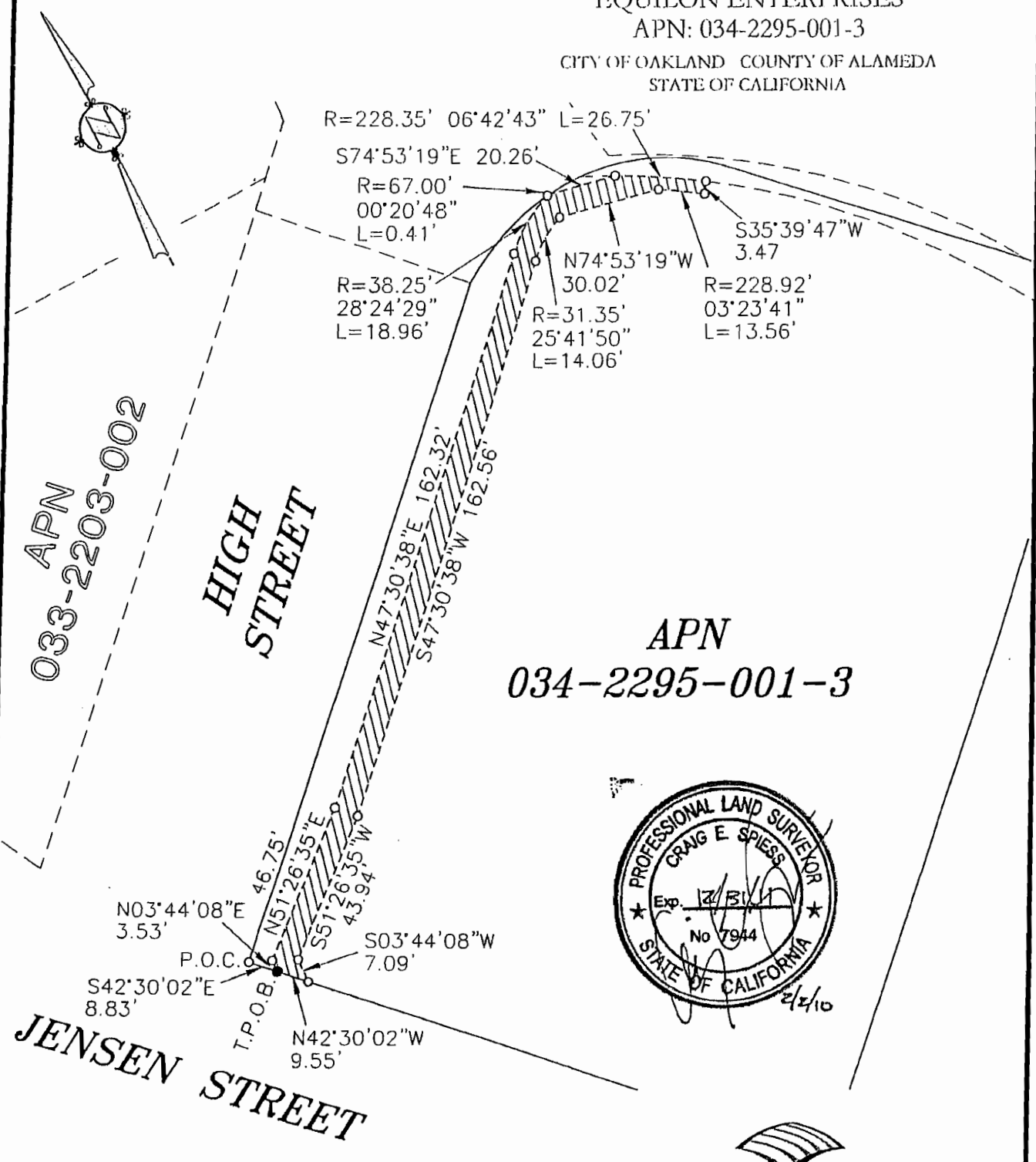
PLAT TO ACCOMPANY
DESCRIPTION

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



033-2203-002
APN

HIGH STREET

APN
034-2295-001-3

JENSEN STREET



SEE DESCRIPTION FOR
COURSE INFORMATION

SCALE: 1"=40'

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