

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2009 SEP 24 PM 3: 03

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 29, 2009

RE: A Report And

- **A Resolution Adopting Findings And Setting A Hearing To Receive Supporting Evidence And Public Comments On A Proposed Vacation Of A Portion Of East 8th Street Between The Intersections Of 37th Avenue And Alameda Avenue, And**
- **An Ordinance Conditionally Vacating The East 8th Street Right-Of-Way Without Cost To The California Department of Transportation (Caltrans) For The Interstate Freeway Route 880 Seismic Retrofitting At High Street**

SUMMARY

The proposed vacation (abandonment) is a follow-up to an agreement the City executed with Caltrans in June 2008 (Resolution No. 81376 C.M.S.) for freeway and companion roadway improvements at High Street and 42nd Avenue (CIP C 98530). The ordinance will conditionally vacate seven-hundred (700) feet of East 8th Street, which adjoins the Interstate 880 right-of-way south of 37th Avenue, to facilitate the seismic retrofitting of the elevated freeway at High Street. Caltrans will re-construct the vacated portion of East 8th Street in a straighter alignment immediately to the west on abutting property it will purchase from Home Depot. Caltrans will dedicate the realigned street right-of-way and reserve easements for existing sewer and storm water mains to the City without cost after construction is approved by the City. The vacation will not be final until the dedication and reservation are accepted by the City Engineer

FISCAL IMPACT

Staff costs for processing the proposed vacation (PPE 08070) are covered by fees set by the Master Fee Schedule. The fees were paid by Caltrans and deposited in the Community and Economic Development Agency's (CEDA) special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

PROJECT DESCRIPTION

Caltrans is seismically retrofitting the elevated sections of Interstate 880 between 34th Avenue and High Street in Oakland. The structural strengthening of the ramps at the High Street overcrossing requires additional land area adjacent to the west side of the freeway right-of-way

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near the Home Depot site at High Street. The retrofitting design will complement the City's capital improvement project (no. C 98530) for roadway upgrades between High Street and 42nd Avenue.

In exchange for the vacation (without cost) of a portion of East 8th Street, Caltrans will purchase adjoining property from Home Depot and construct a replacement street in a straighter alignment than the existing section of curved roadway. The proposed realignment has been reviewed by CEDA's Design and Construction Engineering Division, and the construction, including relocation of existing utilities, will be permitted and inspected by the Building Services Division.

KEY ISSUES AND IMPACTS

Vacation Of Public Right-Of-Way

Staff has determined that the City Council must make the following findings for vacating the East 8th Street right-of-way, as required by the statutes and ordinance indicated below:

- California Streets and Highways Code
 - ✓ The vacation conforms with the City's adopted General Plan.
 - ✓ The vacation will not impact future access for non-motorized transportation.
 - ✓ Easements will be retained for existing City sanitary sewer and storm water mains which cross the vacated right-of-way (from under the freeway).
 - ✓ The vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety.
- California Public Resources Code
 - ✓ Vacation of public right-of-way is categorically exempted from the requirements of the California Environmental Quality Act (CEQA) - Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects).

Dedication of Public Right-Of-Way And Easements

Caltrans will acquire the property for realigning East 8th Street at fair market value from the abutting owner, Home Depot USA, Inc. After the City Engineer has finalized the construction permit, Caltrans will dedicate sanitary and storm water easements and the underlying fee simple interest of the re-aligned street to the City without cost. California Government Code section 7050 allows jurisdictions to accept such dedications, and the proposed ordinance authorizes the City Engineer to accept the dedications on behalf of the City after construction is completed.

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SUSTAINABLE OPPORTUNITIES

Economic

The proposed vacation of a portion of the East 8th Street right-of-way will not impact the tax base for the City or the cost of street maintenance and will provide construction job opportunities for Oakland residents.

Environmental

The proposed vacation ordinance has a standard condition of approval that requires Caltrans to remediate any hazardous material which may be discovered within the vacated right-of-way and to hold the City harmless from future litigation.

Social Equity

The proposed vacation will enhance the seismic safety of a critical arterial in Oakland's transportation network and will assist the rapid economic recovery of the East Bay following an earthquake.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for public infrastructure improvements will conform with State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council for adoption of the proposed resolution of findings and vacation ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and

- adopt the proposed resolution of findings, and
- adopt the proposed ordinance vacating a portion of East 8th Street between the intersections of 37th Avenue and Alameda Avenue without cost to Caltrans, subject to the following conditions:
 - ✓ Caltrans shall pay fees and submit applications to the City Engineer for construction permits to realign East 8th Street and relocate utilities within four (4) years following adoption of the proposed ordinance.

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Introduced by

Councilmember

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Approved for Form and Legality

2009 SEP 24 PM 3:08

City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION ADOPTING FINDINGS AND SETTING A HEARING TO RECEIVE SUPPORTING EVIDENCE AND PUBLIC COMMENTS ON A PROPOSED CONDITIONAL VACATION OF A PORTION OF EAST 8th STREET BETWEEN THE INTERSECTIONS OF 37th AVENUE AND ALAMEDA AVENUE TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SEISMIC RETROFITTING OF INTERSTATE FREEWAY ROUTE 880 AT HIGH STREET

WHEREAS, pursuant to California Streets and Highways Code Section 8300 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on October 6, 2009, beginning at 7:02 p.m. local time to adopt findings for a proposed ordinance conditionally vacating (abandoning) a portion of East 8th Street, formerly Lloyd Street, between the intersections of 37th Avenue, formerly Merrill Avenue, and Alameda Avenue, formerly Washington Avenue, to the California Department Of Transportation (Caltrans) without valuable consideration to the City of Oakland; and

WHEREAS, said meeting also set a hearing beginning at 7:02 p.m. local time in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on October 6, 2009, to receive supporting evidence and public comments on said proposed ordinance conditionally vacating said portion of East 8th Street to Caltrans; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8312 and 8355, Caltrans has previously filed an application (PPE 08070) with the City Engineer of the City of Oakland and paid fees required by the Master Fee Schedule requesting that the Council of the City of Oakland vacate said portion of East 8th Street to Caltrans, as shown on *Exhibit B* attached hereto; and

WHEREAS, said vacation of a portion of East 8th Street will expand the right-of-way westerly of the adjoining Interstate Freeway Route 880 (I 880), formerly California Highway Route 69 (Eastshore Freeway) and Route 17 (Nimitz Freeway), which will facilitate the necessary seismic structural retrofitting of the elevated freeway ramp serving the overcrossing at High Street; and

WHEREAS, pursuant to California Government Code section 7267.2, Caltrans has executed an agreement with the owner, Home Depot USA, Inc., of the westerly parcel adjoining said portion of East 8th Street to purchase sufficient real property for the construction of a re-aligned street as replacement public right-of-way for East 8th Street, as shown on *Exhibit C* attached hereto; and

WHEREAS, pursuant to City of Oakland Resolution Nos. 19487 C.M.S. and 20972 C.M.S., the City and the State of California entered into Freeway Agreements in September 18, 1947, and September 28, 1948, for land acquisition and transportation improvements to the Eastshore Freeway between 34th Avenue and High Street; and

WHEREAS, pursuant to City of Oakland Resolution No. 81376 C.M.S., the Council of the City of Oakland approved an amendment to said Eastshore Freeway Agreements for Caltrans' pending High Street seismic retrofit project and for the City's pending 42nd Avenue/ High Street capital improvement project (no. C 98530); and

WHEREAS, pursuant to said Resolution No. 81376 C.M.S., the City of Oakland and Caltrans executed a Cooperative Agreement on June 30, 2008, concurring that said re-aligned street on said adjoining parcel shall be constructed with infrastructure permits issued and inspected by the City Engineer, as shown on *Exhibit B* attached hereto; and

WHEREAS, Caltrans has also proposed and the City Engineer has concurred that it is necessary for Caltrans to dedicate the underlying fee simple interest of said re-aligned portion of East 8th Street to the City of Oakland without valuable consideration upon completion of the construction to assure that said street will be used as public right-of-way; and

WHEREAS, said portion of real property to be purchased by Caltrans from Home Depot USA, Inc., is identified by the City of Oakland as 3801 East 8th Street and by the Alameda County Assessor as parcel no. 033- 2250- 018-03.

WHEREAS, the metes and bounds establishing the width and curvilinear length of said portion of East 8th Street proposed for vacation is delineated on the map entitled "Right-Of-Way Appraisal A-1326.5", most recently revised August 1, 2007, as shown on *Exhibit A* attached hereto; and

WHEREAS, the metes and bounds of the proposed length and width of said re-alignment of East 8th Street on adjoining privately owned property is also delineated on *Exhibit A* attached hereto; and

WHEREAS, the Traffic Engineer of the City of Oakland has reviewed the design by Caltrans of the proposed re-alignment of East 8th Street across said adjoining parcel; and

WHEREAS, the City of Oakland acquired title to said portion of East 8th Street proposed for vacation through an original dedication of the Lloyd Street right-of-way separating Blocks E and F, as shown on the Brooklyn Township subdivision map entitled "Map Of The Fruitvale Terminal Tract", recorded December 7, 1895, series no. B9899; in book 15 of maps, page 41, by the Alameda County Recorder, and as the metes and bounds of East 8th Street are more fully described by monuments shown on Parcel Map No. 6621, recorded February 15, 1994, series no. 94063301, by the Alameda County Recorder; and

WHEREAS, pursuant to California Streets and Highways Code section 8320, the City of Oakland may vacate public right-of-way upon petition of an interested person; and

WHEREAS, the City Engineer has further determined that the proposed vacation of said portion of East 8th Street will not adversely impact current or future access to adjoining properties or traffic circulation in the area; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8317, 8322, and 8323, facsimiles of the newspaper publication and public posting, attached hereto as *Exhibit D*, and an affidavit, attached as *Exhibit E*, confirming that the City Engineer completed the statutory requirements for notifying the public of the City's intention to vacate a portion of East 8th Street and of the locate, date, and time of public hearing to receive supporting evidence and public comments for the proposed vacation; and

WHEREAS, pursuant to California Streets and Highways Code Section 8313 and Government Code Section 65402, the Secretary of the Planning Commission of the City of Oakland has determined that there is no map or diagram nor any expressed policies or provisions preventing the vacation of these portions of public rights-of-way and that the location, purpose, and extent of the vacation therefore conforms with the City's adopted General Plan; and

WHEREAS, pursuant to California Streets and Highways Code Section 8348, the City Engineer has notified the serving public utilities, including water, natural gas, electricity, and telecommunications, of his intention to recommend to the City Council that said portion of East 8th Street be vacated with the sole reservation of public service easements in the vacated public right-of-way for existing City maintained sanitary sewer and storm water infrastructure, and doing so, has received no objections from said utility companies; and

WHEREAS, pursuant to California Streets and Highways Code Section 8348, the City Engineer has determined and Caltrans has agreed that Caltrans shall assume the responsibility, at its sole expense and to the satisfaction of the City Engineer, for relocating existing publicly maintained utilities and privately owned facilities from said portion of East 8th Street proposed for vacation so that no subsurface or surface piping or cabling will remain in said vacated right-of-way; and

WHEREAS, pursuant to California Streets and Highways Code Section 892, the City Engineer has further determined that the proposed vacation of said portion of East 8th Street will not limit public use of or impede public access for non-motorized transportation; and

WHEREAS, pursuant to California Streets and Highways Code Section 8320, a map delineating the metes and bounds may be used to establish the extent and location of the public right-of-way to be vacated, as shown in *Exhibit A* attached hereto; and

WHEREAS, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; now, therefore, be it

RESOLVED: That pursuant to the California Streets and Highways Code, the California Government Code, and the California Public Resources Code, the Council of the City of Oakland hereby makes the following determinations:

- that pursuant to Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects) of the California Environmental Quality Act (CEQA) Guidelines, the proposed vacation is categorically exempted; and
- that the proposed vacation conforms with the City of Oakland's adopted General Plan; and
- that the statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed; and
- that the City of Oakland may relinquish a portion of the public right-of-way of East 8th Street to the California Department of Transportation for the purpose of extending the westerly boundary of the right-of-way of Interstate Freeway Route 880; and
- the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- the proposed vacation requires the purchase of sufficient private property adjoining East 8th Street by Caltrans and the permitting by the City of Oakland of the construction by Caltrans of a re-aligned portion of East 8th Street, including all publicly maintained infrastructure easement for existing or future subsurface or above-surface utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility; and
- the proposed vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety; and be it
- the proposed vacation will benefit the public and the citizens of Oakland by facilitating the seismic structural strengthening of the elevated freeway overcrossing at High Street; and be it

FURTHER RESOLVED: That the map attached hereto as *Exhibit A* does fully delineate the metes and bounds of the section of public right-of-way proposed for vacation; and be it

FURTHER RESOLVED: That Council of the City of Oakland will condition the vacation of said portion of East 8th Street to the California Department of Transportation without valuable compensation to the City Of Oakland by terms set forth in an ordinance of vacation; and be it

FURTHER RESOLVED: That a hearing to receive supporting evidence and public comments for a proposed ordinance that will conditionally vacate a portion of East 8th Street between the intersections of 37th Avenue and Alameda Avenue to the State of California Department of

Transportation will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on October 6, 2009, at 7:02 p.m. local time.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Limits of the Vacation and Realignment of East 8th Street Between the Intersections of 37th Avenue and Alameda Avenue

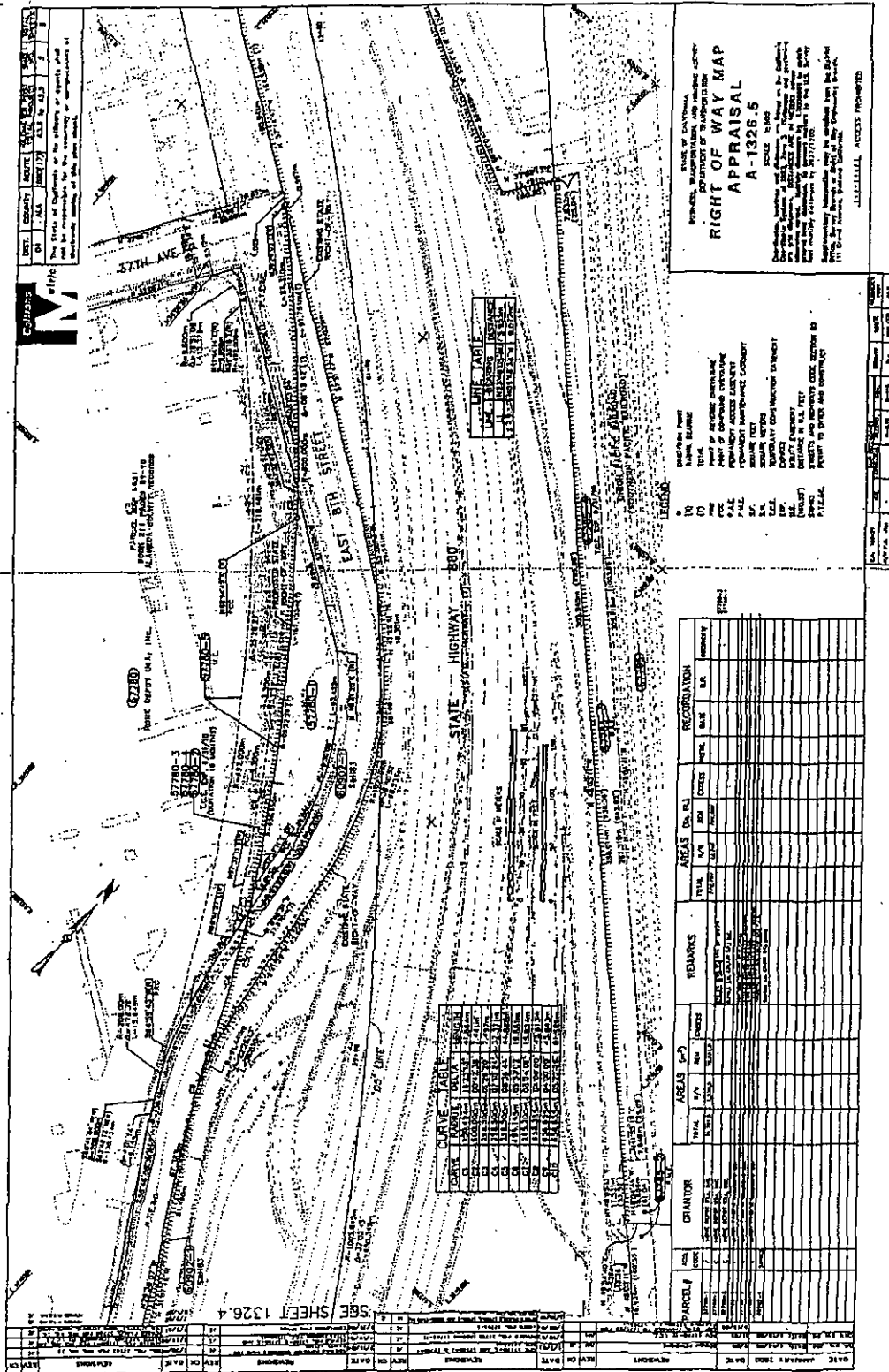


Exhibit B

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF RIGHT OF WAY

111 GRAND AVENUE
P. O. BOX 23440, MS-11A
OAKLAND, CA 94623-0440
PHONE (510) 286-5388
FAX (510) 286-5379
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

March 13, 2009

4-Ala-880
Parcel 57780
E.A. 165422

City Engineer
Oakland, CA

Dear Sir or Madam:

re: Application for the Vacation of East Eighth Street

The State of California, Department of Transportation and Home Depot U.S.A., Inc. request and are in favor of the vacation of East Eighth Street (Street) in the City of Oakland (City), adjacent to our properties between 37th Avenue and the vicinity of 42nd Avenue.

Background:

The State of California, Department of Transportation (Interstate 880) and Home Depot U.S.A., Inc. (4000 Alameda Avenue, Oakland, CA) are the only property owners adjacent to the Street. The Department's High Street Seismic Retrofit Project and the City of Oakland's (City) 42nd Avenue and High Street Access Improvements Project (Projects) are two separate projects that require land from the Home Depot property. In order to construct both public improvement Projects and to do the least harm to Home Depot, the Department and City have agreed that it is necessary to vacate the Street.

The Department and City have entered into a Cooperative Agreement that approves and requires the vacation of the Street (see attachment).

Home Depot has requested and is in favor of the vacation of the Street to reduce the impact of the Projects on its property.

Sincerely,

Handwritten signature of Michael Clancy in black ink.

MICHAEL CLANCY
Associate Right of Way Agent
R/W Acquisition Services
State of California, Department of Transportation

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: Handwritten signature of Erika M. Strawn in black ink.

Name: Erika M. Strawn
Its: Sr. Attorney

Attachment

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON 6/30/08, 2008,
is between the STATE OF CALIFORNIA, acting by and through its Department of
Transportation, referred to herein as "STATE," and

CITY OF OAKLAND, a body politic and a
municipal corporation of the State of
California, referred to herein as "CITY."

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code Section 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State Highway System (SHS) within the City of Oakland.
2. STATE has a State Highway Project for improvements consisting of the Interstate Route 880/High Street Seismic Retrofit Project in the City of Oakland, referred to herein as "STATE PROJECT."
3. Project approval and environmental document (PA&ED) phase for STATE PROJECT has been completed.
4. CITY has a street improvement Project identified as the 42nd Ave./High Street Access Improvement Project, referred to herein as "CITY PROJECT."
5. PA&ED phase for CITY PROJECT has been completed.
6. Both STATE PROJECT and CITY PROJECT will require acquisition of a portion of property owned by Home Depot, Inc., referred to herein as HOME DEPOT ACQUISITION.
7. STATE PROJECT further requires the vacation of a portion of CITY street, specifically, East 8th Street
8. STATE and CITY will each fund fifty percent (50%) of the total cost of the EXPERT WITNESS APPRAISAL (EWA) of the required parcels, performed by an Expert Witness Appraiser.
9. STATE will fund one hundred percent of the costs, estimated to be \$9,500, associated with the vacation of East 8th Street.
10. CITY desires STATE to perform certain right of way services that include complete staff appraisals, prepare acquisition documents and acquire right of way hereinafter, STATE STAFF SERVICES, the terms and conditions of which are defined in Section I, Article 1.

STATE is agreeable to provide STATE STAFF SERVICES to CITY as reimbursed pursuant to section II for HOME DEPOT ACQUISITION work.

11. CITY is willing to fund fifty percent (50%) of STATE's estimated costs of STATE STAFF SERVICES performed on HOME DEPOT ACQUISITION.
12. The parties now define herein below the terms and conditions under which STATE STAFF SERVICES for HOME DEPOT ACQUISITION are to be performed and financed.

SECTION I

STATE AGREES:

1. To perform EWA and STATE STAFF SERVICES (complete staff appraisals, prepare acquisition documents and acquire right of way) that are required for the HOME DEPOT ACQUISITION.
2. To account for all costs for EWA and STATE STAFF SERVICES to be paid for by CITY for HOME DEPOT ACQUISITION pursuant to this Agreement.
3. To submit a billing in the amount of \$20,000 to CITY immediately following execution of this Agreement. Said figure represents STATE's estimated costs for CITY'S share of STATE STAFF SERVICES, paid in a lump sum, for HOME DEPOT ACQUISITION. Any portion of CITY's funds not expended by STATE shall be reimbursed to CITY upon the expiration or sooner termination of this Agreement.
4. To hire an Expert Witness Appraiser to appraise both CITY and STATE parcels on the HOME DEPOT ACQUISITION. The cost of said Expert Witness Appraiser is estimated to be \$25,000; however contract is for \$50,000 to cover any unexpected charges. Both CITY and STATE will get an original copy of the appraisal.
5. To pay for fifty percent (50%) of the total cost of the EWA for the CITY and STATE parcels. STATE shall pay the Appraisal firm for the total cost of appraisal and then submit a billing to CITY for CITY's proportional share of the total cost of the appraisal. STATE shall include a copy of the appraiser's invoice and a copy of the payment STATE submits to Expert Witness Appraiser.
6. To retain, or cause to be retained for audit by CITY's auditors, for a period of three (3) years from date of processing, the final detailed accounting statement and all STATE STAFF SERVICES records, and to make such materials available at STATE's District 4 Office. Copies thereof shall be furnished to CITY if requested by CITY.
7. To make application, provide all supporting documentation as required by Community and Economic Development Agency (CEDA) Building Services procedures and pay for 100% of costs associated with the vacation of East 8th Street, estimated by the CITY to be \$9,500 (i.e., \$5,000 for the Street Vacation and \$4,500 for the Street Search).
8. To complete all mapping and utility relocation work and provide a permanent public utility easement through the vacated East 8th Street corridor, and generally to coordinate and make arrangements with said utilities to ensure that said public utility easement is recorded with the appropriate property title documents.

SECTION II

CITY AGREES:

1. To deposit with STATE within twenty (20) business days of receipt of billing therefore which billing will be forwarded immediately following execution of this Agreement, the amount of \$20,000. Said figure represents the estimated costs for CITY's share of STATE STAFF SERVICES for HOME DEPOT ACQUISITION. STATE shall draw against these funds for the STATE STAFF SERVICES. In the event that the CITY's share of STATE STAFF SERVICES exceeds \$20,000, CITY will reimburse STATE pursuant to an amendment to this Agreement.
2. To reimburse STATE for fifty percent (50%) of the total cost, not to exceed \$25,000, of the EWA, performed by the Expert Witness Appraiser for the CITY and STATE parcels, within twenty (20) business days of receipt of STATE's billing therefor. In the event that the total cost of the EWA exceeds \$50,000, CITY will reimburse STATE pursuant to an amendment to this Agreement.
3. To open an escrow account and deposit into said escrow account, CITY's share of the acquisition capital cost for CITY parcel, when settlement has been reached. If CITY's parcel goes to condemnation, CITY shall pay the STATE's legal staff and all associated costs necessary to condemn CITY parcel.
4. To bear all responsibility and costs of property management for all ongoing business concerns associated with CITY parcel upon recordation of deed to City.
5. To pursue all necessary steps in processing the vacation of East 8th Street, including approval by the City Council.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. In the event that there is a dispute between CITY and STATE regarding the dollar amount, or portions of the dollar amount, on receipt of STATE's billing, STATE's District Director for District 4 will provide CITY with a written decision on resolution of the dispute within sixty (60) days of receiving written notice of a billing dispute from CITY. If CITY is not satisfied with the District Director's decision, CITY may appeal the District Director's decision to the State Local Programs Dispute Resolution Committee (LPDRC) for final resolution. The LPDRC will have 60 days to make a final resolution after receiving CITY written appeal. If the CITY disputes the LPDRC's decision, the CITY may seek the services of the Judicial Arbitration and Mediation Services, Inc. for mediation purposes to resolve the dispute.
3. The party that discovers Hazardous Materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by STATE or CITY PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by STATE or CITY PROJECT.

4. STATE, independent of HOME DEPOT ACQUISITION, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to HOME DEPOT ACQUISITION schedule and will pay all costs for HM-1 management activities.

CITY, independent of HOME DEPOT ACQUISITION, is responsible for any HM-1 found within existing CITY right of way. Any HM-1 management activities undertaken by CITY shall be performed with minimum impact to HOME DEPOT ACQUISITION schedule and CITY will pay all costs for HM-1 management activities.

5. If HM-2 is found within the limits of HOME DEPOT ACQUISITION, the public agency responsible for advertisement, award, and administration (AAA) of the STATE or CITY PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a STATE or CITY PROJECT construction cost.

6. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
7. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
8. If, during performance of right of way activities, new information is obtained which requires the preparation of additional environmental documentation for CITY PROJECT or STATE PROJECT to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks.
9. All administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for STATE PROJECT and CITY PROJECT will be held in confidence, pursuant to Government Code section 6254.5(e).

Parties will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete HOME DEPOT ACQUISITION without the written consent of the party authorized to release them, unless required or authorized to do so by law.

10. CITY agrees to obtain, as a CITY PROJECT cost, all necessary CITY PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing.
11. STATE agrees to obtain, as a STATE PROJECT cost, all necessary STATE PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing.
12. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental approvals for CITY PROJECT. The costs of said compliance and implementation shall be a CITY cost.
13. STATE shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s),

agreement(s), and/or environmental approvals for STATE PROJECT. The costs of said compliance and implementation shall be a STATE cost.

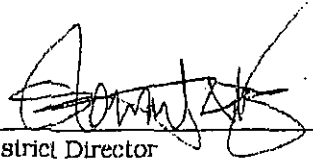
14. If there is a legal challenge to STATE PROJECT's environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for STATE PROJECT, all legal costs associated with those said legal challenges shall be a STATE cost.
15. If there is a legal challenge to the CITY PROJECT's environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for CITY PROJECT, all legal costs associated with those said legal challenges shall be a CITY cost.
16. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation or maintenance of State highways different from the standard of care imposed by law.
17. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that CITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
18. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
19. Prior to commencement of STATE STAFF SERVICES for HOME DEPOT ACQUISITION, CITY may terminate HOME DEPOT ACQUISITION and this Agreement in writing. CITY shall remain obligated to reimburse STATE, CITY share of all cost incurred by STATE under this agreement prior to its termination.
20. If termination of this Agreement is by mutual consent, CITY will bear fifty percent (50%) of all STATE STAFF SERVICES related costs incurred by STATE prior to termination and fifty percent (50%) of the total cost of the appraisal performed by the Expert Witness Appraiser.
21. This Agreement may be terminated or provisions contained herein may be altered, changed, or amended by mutual consent of the parties hereto by way of a written amendment to this Agreement.

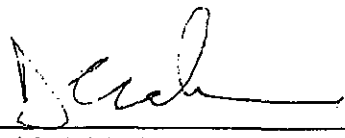
- 22. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- 23. Notwithstanding any provisions in this Agreement to the contrary, this Agreement shall terminate upon completion of all right of way activities for CITY PROJECT, or on December 31, 2012, whichever is earlier in time, however, the indemnification, legal challenge, environmental commitments, and audit clauses shall remain in effect until terminated or modified, in writing, by mutual agreement of the parties hereto.

STATE OF CALIFORNIA
Department of Transportation

CITY OF OAKLAND

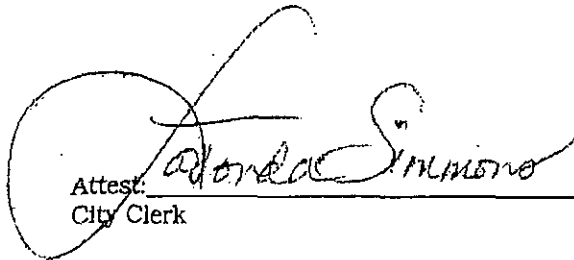
WILL KEMPTON
Director

By: 
Deputy District Director

By: 
City Administrator

Approved as to form and procedure:

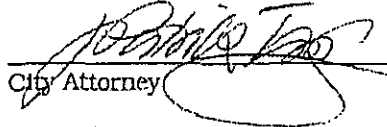

Attorney
Department of Transportation

Attest: 
City Clerk

Certified as to budgeting of funds:


District Budget Manager

Approved as to form:


City Attorney

Certified as to financial terms and conditions:


Accounting Administrator

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

[Signature]
City Attorney

2008 MAY 29 PM 4:44 RESOLUTION No. 81376 C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO EXECUTE A COOPERATIVE AGREEMENT AND AN AMENDMENT TO THE EXISTING FREEWAY AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), FOR THE HIGH STREET SEISMIC RETROFIT AND 42ND/HIGH STREET PROJECTS

WHEREAS, the California Department of Transportation (Caltrans) and the City each have ongoing projects in the area of High Street and 42nd Avenue, namely, the High Street Seismic Retrofit Project, the 42nd/High Street Access Improvement Project, respectively; and

WHEREAS, both projects have previously received project and environmental approvals; and

WHEREAS, both projects require the acquisition real property from parcels adjacent to each project site; and

WHEREAS, Caltrans' High Street Seismic Retrofit Project requires that the City vacate a portion of East 8th Street, east of 37th Avenue, to accommodate the reconfigured offramp location; and

WHEREAS, it is in the best interest of Caltrans and the City to consolidate the acquisition of said property by a single party, namely, Caltrans, to maximize efficiency of efforts and costs, and to minimize disruption to the affected property owner; and

WHEREAS, City staff will undertake proceedings to vacate a portion of East 8th Street, east of 37th Avenue, as a separate Council action, as said street will become unnecessary for general circulation of traffic after construction of the two projects; and

WHEREAS, Caltrans and the City wish to enter into cooperative agreement for the acquisition of property and proposed street vacation; and

WHEREAS, sufficient funding is available in the Caltrans Grant Fund (2140), 42nd Avenue High Street Right of Way Project (C98530); and

WHEREAS, Caltrans and the City have previously entered into a Freeway Agreement, dated September 18, 1947, relating to that portion of State Highway Route 880 from High Street to Oak Street; and

CERTIFIED COPY

I certify that this is a true and authentic copy of this document.

[Signature]
Office of the City Clerk

6/30/08
Date

WHEREAS, said Freeway Agreement will need to be amended to reflect the reconfiguration of the reconstructed freeway and City streets; now, therefore, be it

RESOLVED: that the City Administrator or her designee hereby be authorized to execute a cooperative agreement and an amendment to the existing freeway agreement with the California Department of Transportation (Caltrans), for the High Street Seismic Retrofit and 42nd/High Street projects; and be it

FURTHER RESOLVED: that the City Administrator or her designee be authorized to execute any additional documents or funding agreements necessary for the completion of the City's 42nd/High Street Access Improvement Project

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 17, 2008, 20

PASSED THE FOLLOWING VOTE:

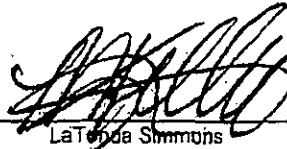
AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN; NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE - 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

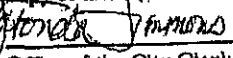
ATTEST:



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

CERTIFIED COPY

I certify that this is a true and authentic copy of this document.


Office of the City Clerk

6/30/08
Date

Exhibit C

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF RIGHT OF WAY
111 GRAND AVENUE
P. O. BOX 23440 - MS 11A
OAKLAND, CA 94623-0440
PHONE (510) 286-5388
FAX (510) 286-5379
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

THIS COPY FOR
M. Clancy

May 14, 2008

4-A1a-880
Parcels 57780-1, 57780-2, 57780-5
E.A. 165422

Home Depot U.S.A., Inc.
Attn: Ann K. Jerhoff, Counsel
Real Estate Law Group
3800 West Chapman Avenue
Orange, CA 92868

Dear Ms. Jerhoff:

Attached is your copy of the Right of Entry agreement, which has now been executed on behalf of the State of California.

Your cooperation is appreciated.

Sincerely,

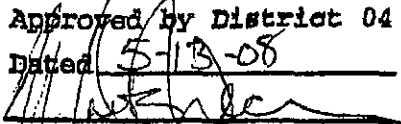
Original Signed By:

MICHAEL CLANCY
Associate Right of Way Agent
Acquisition Services

Attachment

cc: Home Depot U.S.A., Inc.
Attn: Vice President, Real Estate Law Group
Store No. 1007
2455 Paces Ferry Road, C-20
Atlanta, GA 30339-4024

State of California
Department of Transportation
Mr. Bijan Sartipi
District Director
District 04
111 Grand Avenue
Oakland, CA 94612

Approved by District 04
Dated 5-13-08

MARK L. WEAVER
District Office Chief
R/W Acquisition/Utility Services

Dear Mr. Sartipi:

Permission is hereby granted to enter upon our land, at 4000 Alameda Ave., Oakland CA as indicated by sub-parcel numbers 57780-1, 57780-2 & 57780-5 on the attached Appraisal Maps A-1326.0a, A-1326.4 & A-1326.5 dated March 20, 2007 for the purpose of constructing or improving a public highway and accomplishing all necessary incidents thereto.

It is understood that this permission is not a waiver in any way of the right of compensation for such land or of any remedy authorized by law to secure payment therefor. Home Depot U.S.A., Inc., a Delaware corporation (referred to herein variously as "Owner", "Grantor", and "Home Depot") acknowledges it has been advised of its right to receive immediate compensation and has waived that right, agreeing to be compensated at a later date with interest.

This permission is granted in consideration of the location, improvement and construction of such highway and incidents thereto, which it is understood is required by the State of California, Department of Transportation ("State" or "the Department"), with the understanding that you will hereafter without unnecessary delay, negotiate with the undersigned, and any other person, if any, having any right, title or interest in said property, to agree upon terms of compensation and that, if any agreement cannot be reached you will promptly commence eminent domain proceedings, including a deposit of funds to support an Order for Possession, to have such compensation determined.

Section 1245.235 of the Code of Civil Procedure requires the State of California, Department of Transportation, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or others of record. (If an offer has not been made, an appraisal will be prepared as soon as practicable and an offer made of the full amount of such appraisal.)

By granting this irrevocable right to possession and use of the parcels to State, Owner agrees to the following: (1) Owner specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure Section ~~1240:030~~ and the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit A; (2) Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit A; and (3) in any eminent domain action filed by State to acquire the property described in Exhibit A, Owner shall not challenge State's right to take such property, and the only issue shall be the amount of just compensation for the property.

It is understood that the State of California, Department of Transportation, will pay interest from the date of execution of this Right of Entry on the just compensation paid by the State of California, Department of Transportation. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

The State agrees to indemnify and hold harmless Grantor from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages arising from State's operations under this agreement and State will, at its option, either repair or pay for such damage. The State shall either fill any excavations made by the State in the subject property at the end of each construction day or take such steps, consistent with standard engineering and construction practices, as are reasonably necessary to secure and limit public access to the excavation areas.

It is understood and agreed by and between the parties hereto that this Right of Entry gives the State possession of the requirement, as described on the attached map, for the State's project and that possession of the requirements for the City's project is not required at this time.

The State made a written offer of \$1,778,000 to Home Depot for the State's requirement on March 15, 2005. Based on the reduced requirement that is described on the attached map, the State's appraisal is being revised. This reduced amount will be the basis of the State's future offer to compensate Home Depot for the reduced requirement, improvements and damages, if

any. The parties acknowledge and agree that the State's final written offer to Home Depot will include the Initial Pylon Sign Payment and the Initial Parking Lot Payment (as those terms are defined below); and that so long as the State pays the Initial Pylon Sign Payment and the Initial Parking Lot Payment to Home Depot in accordance with the terms of this Right of Entry, the Initial Pylon Sign Payment and the Initial Parking Lot Payment will be deducted from the final payment to be paid by the State to Home Depot for the State's requirement.

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 as described on the attached map, for the State's project, including the right to remove and dispose of improvements, shall commence on the date of execution of this Right of Entry.

It is understood and agreed by and between the parties hereto that the order of construction of the State's project will be (1) the reconfiguration of the parking lot by Home Depot to accommodate the re-establishment of the pylon sign; (2) re-establishment of the approximately 100 foot pylon sign by Home Depot as described hereafter; (3) relocation of utilities by the State and its agents onto the utility corridor identified on the attached map as sub-parcel 57780-5, restricting use of that portion of the parking; (4) grading and paving of sub-parcel 57780-5 by the State and its agents after utility relocation has been completed; and (5) the re-establishment of the parking lot by Home Depot after the completion of the State's project and the East 8th Street vacation.

It is understood and agreed by and between the parties hereto that the Department and Home Depot will enter into a Right of Way Contract to compensate Home Depot for the actual cost to re-establish the pylon sign onto their remainder parcel, including without limitation soft costs such as permit fees and engineering fees. An initial payment of \$200,000.00 will be made to Home Depot within sixty (60) days after the full execution of this Right of Entry by the State and Grantor (the "Initial Pylon Sign Payment"). Said Contract will be handled separate from the land acquisition and related costs. Home Depot will re-establish said sign as soon as possible after the execution of the beforementioned contract. As discussed above, the Initial Pylon Sign Payment will not be included in the State's final compensation.

It is understood and agreed by and between the parties hereto that it is the intent of the State to make its best effort to coordinate the aforementioned utility relocations so that they are completed within 18 months of their commencement, as set forth in the Construction Schedule attached hereto as Exhibit B ("Construction Schedule").

It is understood and agreed by and between the parties hereto that the Department and Home Depot will enter into a Right of Way Contract to compensate Home Depot for the actual costs to relocate site utilities, meters and light poles at parcel 57780-5 to the extent necessary to assure their continued functionality and security during the State's performance of its work, and to re-establish their parking lot on the surface of the aforementioned utility corridor, parcel 57780-5, and the vacated portion of East 8th Street as described hereafter, including without limitation soft costs such as permit fees and engineering fees, and all attorneys' fees (up to a maximum amount of \$47,000.00) incurred by Home Depot with respect to the preparation and negotiation of this Right of Entry and the other documents and instruments leading up to, or resulting from, this Right of Entry and the State's acquisition of an easement across the subject property (provided,

however, that the foregoing provisions of this sentence shall not obligate the State to compensate Home Depot for any attorneys' fees arising from litigation between Home Depot and the State with respect to the valuation of the easement to be acquired by the State). An initial payment of \$120,000.00 will be made to Home Depot upon the full execution of this Right of Entry by the State and Grantor (the "Initial Parking Lot Payment"). Said Contract will be handled separate from the land acquisition and related costs. Home Depot will be responsible for re-establishing said parking lot. As discussed above, the Initial Parking Lot Payment will not be included in the State's final compensation.

It is further understood and agreed by and between the parties hereto that the City of Oakland (City) and the Department are jointly working toward the closure of East 8th Street between 37th Avenue and Alameda Avenue. The Department, City and Home Depot will enter into a global settlement to transfer the property rights required for both the City's and the Department's projects. Said settlement will provide for the closing of East 8th Street and deeding the excess, vacated East 8th Street to Home Depot with a reservation for the necessary easements to maintain said excess as a public utility corridor. Said reservation may include underground, surface and aerial utility easements. Every effort will be made to place surface facilities in such a way to be consistent with Home Depot's parking lot. Said reservation will primarily be for underground utilities and will not affect Home Depot's right to use said excess area as an "at grade" parking lot. The aforementioned limitations on said reservations will be included in the utility easement portion of the grant deeds transferring the project requirements for both the City and Department's projects.

The State shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of the State and shall keep Grantor's property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. If any lien is filed, the State shall cause such lien to be released and removed within twenty (20) days after the date of filing, and if the State fails to do so, Grantor, at the State's expense, may take such action as may be necessary to remove such lien, without the duty to investigate the validity of such lien. Prior to entry upon Grantor's property, the State shall provide Grantor with evidence of commercial general liability insurance (i.e., a certificate of insurance), naming Grantor as an additional insured which covers the entry upon Grantor's property by the State and/or the State's representatives and agents. Such insurance shall have a limit of liability of not less than Three Million Dollars (\$3,000,000.00) per occurrence and in the aggregate and be on an "occurrence" and not a "claims made" basis. Home Depot acknowledges that the State is self insured. Proof of insurance is attached hereto as Exhibit C.

Should any dispute arise over the interpretation of this Right of Entry or should any action be brought to enforce the terms of this Right of Entry, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs.

This Right of Entry contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Right of Entry shall be of no force or effect. This Right of Entry may be amended only by a written instrument signed by both Grantor and the State.

This Right of Entry may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

All notices given under this Right of Entry shall be in writing and shall be transmitted either by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

To the State: Department of Transportation, District 4
Attn: Michael Clancy, MS 11A
111 Grand Avenue, Oakland, CA 94612
P. O. Box 23440
Oakland, CA 94623-0440

To Grantor: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339-4024
Attention: Vice President - Real Estate Law Group
Store No.: 1007

With a copy to: Home Depot U.S.A., Inc.
3800 West Chapman Avenue
Orange, CA 92868
Attention: Divisional Corporate Counsel -
Real Estate Law Group

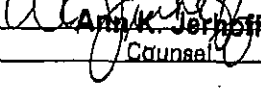
The failure to insist upon strict performance of any of the terms, covenants, conditions and agreements contained herein shall not be deemed a waiver of any rights or remedies of the failing party, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants contained herein by the same or any other person or entity.

Except as expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the subject property or any other portion of Grantor's property to the general public

or for any public purpose whatsoever, it being the intention of the parties that this Right of Entry shall be strictly limited to and for the purposes herein expressed.

Sincerely,

HOME DEPOT U.S.A., INC.,
a Delaware corporation


By: 
Name: Anna K. Johnson
Its: General

Address: Home Depot, U.S.A.
3800 Chapman Avenue
Orange, CA 92868

Exhibit A: Description of Subject Property
Exhibit B: Construction Schedule
Exhibit C: Proof of State's Insurance

BM PMK 5/7/08

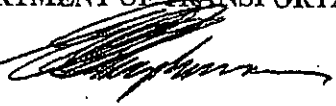
RECOMMENDED FOR APPROVAL:


By 
MICHAEL CLANCY
Right of Way Agent

ACCEPTED:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By 
JASPREET SINGH
District Branch Chief
R/W Acquisition Services "B"

By 
R. A. MACPHERSON
Deputy District Director
Right of Way

By 
STANLEY GEE
Project Manager
Project Management East - Ala

Construction Schedule

Preliminary Construction Schedule (Parcel No. 57780 Home Depot)

Prior to Begin Construction on State's Project

0-18 Months (Relocation by Utility Companies)

(Note: Utility relocation schedule is preliminary. For final schedule, see D4 - R/W Utilities.)

- East Bay Municipal Utility District (EBMUD) will relocate its 48" sanitary sewer line. The final connections will be outside of the Home Depot easement area, as soon as possible, during the dry season.
- EBMUD and all other utilities will repave and stripe after their respective relocations
- All other utilities relocate into the easement area after EBMUD is finished.

Begin Construction on State's Project

0-8 Months (Work Not Impacting Home Depot)

8-13 Months (Work Impacting Home Depot)

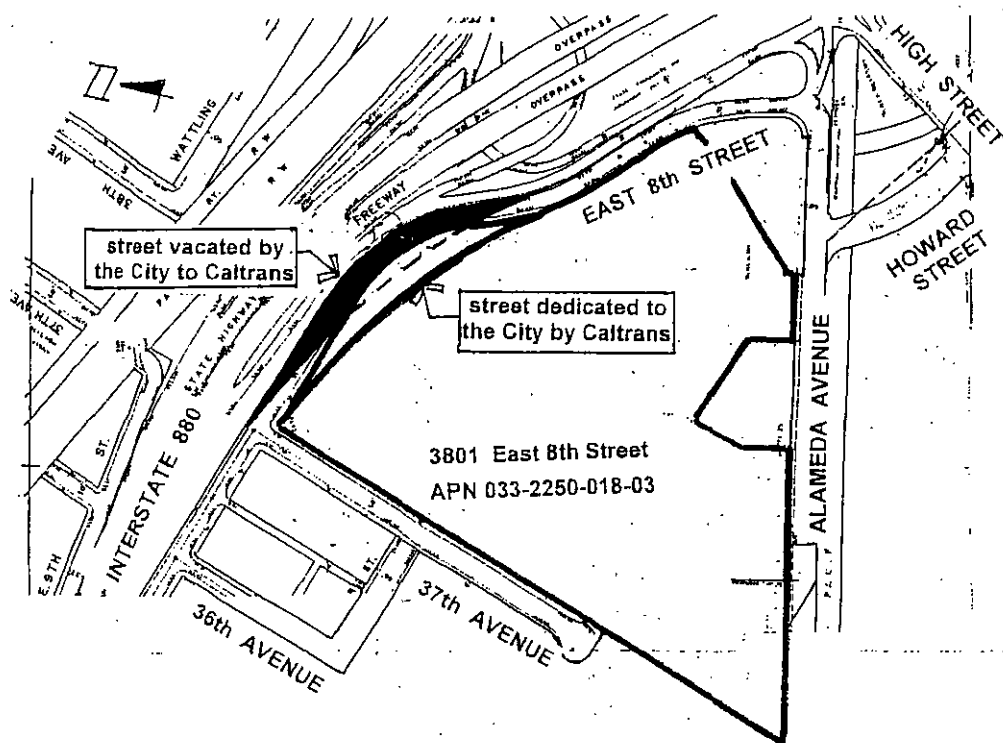
- East 8th Street closed
- State demolishes East 8th and land acquired in fee from Home Depot.
- State relocates City of Oakland's sewer onto the easement area.
- State builds and finishes retaining wall on southeast side of Home Depot.
- State finishes curb and gutter at East 8th Street closures.
- All planned major construction on Home Depot parking lot easement area completed.

Approximately 13 months from begin construction on State's project, work outside the Home Depot property completed.

Exhibit D

Notification Of A Public Hearing On A Proposed Conditional Vacation Of A Portion Of East 8th Street Between The Intersections Of 37th Avenue And Alameda Avenue To The California Department Of Transportation (Caltrans)

PUBLIC NOTICE



Pursuant to California Streets and Highways Code Section 8320 et seq., notice is given to the public that the Council of the City of Oakland intends to vacate a portion of East 8th Street between the intersections of 37th Avenue and Alameda Avenue without cost to the California Department Of Transportation for the Interstate 880 seismic retrofit at High Street.

Notice is also given to the public that the Council of the City of Oakland will hold a hearing to receive evidence supporting and public comments for the proposed conditional vacation in the Chamber of the City Council, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on October 6, 2009, beginning at 7:02 p.m. local time.

It is a misdemeanor to deface or to remove this posting. Violators are subject to a fine of \$1,000 and a jail sentence of 6 months.

Exhibit E

Affidavit Certifying Notifications Of A Public Hearing On A Proposed Conditional Vacation Of A Portion Of East 8th Street Between The Intersections Of 37th Avenue And Alameda Avenue To The California Department Of Transportation (Caltrans)

Pursuant to California Streets and Highways Code Section 8322, I hereby certify that the following public notifications did occur on the dates and times and at the locations and for the durations indicated below:

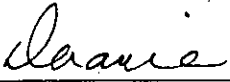
Site Posting

Facsimiles of the attached placard were affixed before September 22, 2009, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along East 8th Street between the intersections of 37th Avenue and Alameda Avenue, and have remained in place since then advising the public of a hearing on October 6, 2009, at 7:02 p.m. local time, in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, to receive evidence and public testimony on the proposed vacation of a portion of the public right-of-way delineated on the placard.

Newspaper Publication

The attached notice was published in the *Oakland Tribune* on September 8, 2009, and September 15, 2009, advising the public of a hearing on October 6, 2009, at 7:02 p.m. local time in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza to receive evidence and public testimony on the proposed vacation of a portion of East 8th Street between the intersections of 37th Avenue and Alameda Avenue to the California Department Of Transportation (Caltrans) without cost and further advising the public that a map delineating the portion of the public right-of-way proposed for vacation is available at the Building Services counter on the Second Floor of the Dalziel Administration Building at 250 Frank H. Ogawa Plaza.

date September 17, 2009

by 
RAYMOND M. DERANIA
Deputy Director - City Engineer
Community and Economic Development Agency

Introduced by

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 SEP 24 PM 3:03

Approved for Form and Legality



City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

**ORDINANCE CONDITIONAL VACATING OF A PORTION OF EAST 8th STREET
BETWEEN THE INTERSECTIONS OF 37th AVENUE AND ALAMEDA AVENUE
TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE
INTERSTATE FREEWAY ROUTE 880 SEISMIC RETROFIT AT HIGH STREET**

WHEREAS, pursuant to California Streets and Highways Code Section 8300 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on October 6, 2009,, beginning at 7:02 p.m. local time to receive supporting evidence and public comments for a proposed ordinance conditionally vacating (abandoning) a portion of East 8th Street, formerly Lloyd Street, between the intersections of 37th Avenue, formerly Merrill Avenue, and Alameda Avenue, formerly Washington Avenue, to the California Department Of Transportation (Caltrans); and

WHEREAS, pursuant to the California Streets and Highways Code, California Government Code, and California Public Resources Code, the Council of the City of Oakland has previously made the following statutory determinations by Resolution:

- The Council of the City of Oakland may adopt terms of performance by the California Department of Transportation that condition the vacation.
- The proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA).
- The proposed vacation conforms with the City of Oakland's adopted General Plan.
- The statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed.
- The statutory requirements for properly noticing serving utilities of the proposed vacation and intention to reserve public service easements for City maintained infrastructure were completed the public through conspicuous site.
- The City of Oakland may relinquish a portion of the public right-of-way of East 8th Street to the California Department of Transportation for the purpose of extending the westerly boundary of the right-of-way of Interstate Freeway Route 880.
- The proposed vacation does not limit public use or impede public access for non-motorized transportation.

- The proposed vacation requires the purchase of sufficient private property adjoining East 8th Street by Caltrans and the permitting by the City of Oakland of the construction by Caltrans of a re-aligned portion of East 8th Street, including all publicly maintained infrastructure easement for existing or future subsurface or above-surface utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility.
- The proposed vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety.
- The proposed vacation will benefit the public and the citizens of Oakland by facilitating the seismic structural strengthening of the elevated freeway overcrossing at High Street; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8312 and 8355, Caltrans has previously filed an application (PPE 08070) with the City Engineer of the City of Oakland and paid fees required by the Master Fee Schedule requesting that the Council of the City of Oakland vacate said portion of East 8th Street to Caltrans, as shown on *Exhibit B* attached hereto; and

WHEREAS, said vacation of a portion of East 8th Street will expand the right-of-way westerly of the adjoining Interstate Freeway Route 880 (I 880), formerly California Highway Route 69 (Eastshore Freeway) and Route 17 (Nimitz Freeway), which will facilitate the necessary seismic structural retrofitting of the elevated freeway ramp serving the overcrossing at High Street; and

WHEREAS, pursuant to California Government Code section 7267.2, Caltrans has executed an agreement with the owner, Home Depot USA, Inc., of the westerly parcel adjoining said portion of East 8th Street to purchase sufficient real property for the construction of a re-aligned street as replacement public right-of-way for East 8th Street, as shown on *Exhibit C* attached hereto; and

WHEREAS, pursuant to City of Oakland Resolution Nos. 19487 C.M.S. and 20972 C.M.S., the City and the State of California entered into Freeway Agreements in September 18, 1947, and September 28, 1948, for land acquisition and transportation improvements to the Eastshore Freeway between 34th Avenue and High Street; and

WHEREAS, pursuant to City of Oakland Resolution No. 81376 C.M.S., the Council of the City of Oakland approved an amendment to said Eastshore Freeway Agreements for Caltrans' pending High Street seismic retrofit project and for the City's pending 42nd Avenue/ High Street capital improvement project (no. C 98530); and

WHEREAS, pursuant to said Resolution No. 81376 C.M.S., the City of Oakland and Caltrans executed a Cooperative Agreement on June 30, 2008, concurring that said re-aligned street on said adjoining parcel shall be constructed with infrastructure permits issued and inspected by the City Engineer, as shown on *Exhibit B* attached hereto; and

WHEREAS, Caltrans has also proposed and the City Engineer has concurred that it is necessary for Caltrans to dedicate the underlying fee simple interest of said re-aligned portion of East 8th

Street to the City of Oakland without valuable consideration upon completion of the construction to assure that said street will be used as public right-of-way; and

WHEREAS, said portion of real property to be purchased by Caltrans from Home Depot USA, Inc., is identified by the City of Oakland as 3801 East 8th Street and by the Alameda County Assessor as parcel no. 033- 2250- 018-03.

WHEREAS, the metes and bounds establishing the width and curvilinear length of said portion of East 8th Street proposed for vacation is delineated on the map entitled "Right-Of-Way Appraisal A-1326.5", most recently revised August 1, 2007, as shown on *Exhibit A* attached hereto; and

WHEREAS, the metes and bounds of the proposed length and width of said re-alignment of East 8th Street on adjoining privately owned property is also delineated on *Exhibit A* attached hereto; and

WHEREAS, the Traffic Engineer of the City of Oakland has reviewed the design by Caltrans of the proposed re-alignment of East 8th Street across said adjoining parcel; and

WHEREAS, the City of Oakland acquired title to said portion of East 8th Street proposed for vacation through an original dedication of the Lloyd Street right-of-way separating Blocks E and F, as shown on the Brooklyn Township subdivision map entitled "Map Of The Fruitvale Terminal Tract", recorded December 7, 1895, series no. B9899, in book 15 of maps, page 41, by the Alameda County Recorder, and as the metes and bounds of East 8th Street are more fully described by monuments shown on Parcel Map No. 6621, recorded February 15, 1994, series no. 94063301, by the Alameda County Recorder; and

WHEREAS, pursuant to California Streets and Highways Code Section 8348, the City Engineer has determined and Caltrans has agreed that Caltrans shall assume the responsibility, at its sole expense and to the satisfaction of the City Engineer, for relocating existing publicly maintained utilities and privately owned facilities from said portion of East 8th Street proposed for vacation so that no subsurface or surface piping or cabling will remain in said vacated right-of-way; and

WHEREAS, pursuant to California Streets and Highways Code Section 8320, a map delineating the metes and bounds may be used to establish the extent and location of the public right-of-way to be vacated, as shown in *Exhibit A* attached hereto; and

WHEREAS, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

1. The conditional vacation of a portion of East 8th Street between the intersections of 37th Avenue and Alameda Avenue, as delineated in the attached *Exhibit A*, without cost to the California Department Of Transportation (Caltrans) is hereby ordered.

2. Pursuant to California Streets and Highways Code section 8348, public service easements for existing and relocated sanitary sewer and storm water mains maintained by the City of Oakland shall be reserved, and the metes and bounds locating said reservations shall be established to the satisfaction of the City Engineer of the City of Oakland.
3. Pursuant to California Government Code section 7050, the City Engineer of the City of Oakland is hereby authorized to accept the dedication without cost of the underlying fee simple interest of said re-aligned portion of East 8th Street upon completion of the construction and final inspection approval of the infrastructure permit.
4. This Order of Vacation shall expire by limitation and become void should the California Department of Transportation fail to complete all of the following required actions within each of the time limitations set forth below:
 - a. *Within four (4) years following adoption of this ordinance, Caltrans or its authorized designee shall file a complete infrastructure permit application with the City Engineer and pay all required fees and security deposits to re-align the public right-of-way for East 8th Street and re-locate existing and install new publicly maintained utilities and privately owned facilities, which include, but are not limited to, potable water piping, natural gas piping, fuel oil piping, sanitary sewer and storm water piping, electrical and communications cabling, sidewalk, curb, gutter, storm water catchments, roadway paving, and street lighting.*
 - b. *Within one (1) year following the filing of a complete infrastructure permit application, Caltrans or its authorized designee shall obtain an issued permit and commence construction.*
 - c. *Within two (2) years following commencement of construction, Caltrans or its authorized designee shall obtain final inspection approval from the City Engineer for said infrastructure permits.*
 - d. *Within one year (1) year following final inspection approval of the infrastructure permit, Caltrans shall file an offer of dedication with the City Engineer and in a form acceptable to the City Attorney of the City of Oakland for the underlying fee simple interest of the re-aligned portion of East 8th Street without cost to the City of Oakland.*
5. By the acceptance of the vacated section of the East 8th Street public right-of-way, the California Department of Transportation acknowledges each of and agrees to all of the following:
 - a. The California Department of Transportation shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, representatives, agents, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out said vacation and regardless of responsibility for negligence.

- b. The City of Oakland makes no representations or warranties as to the conditions beneath said vacated section of the public right-of-way; and that by accepting this vacation, the California Department of Transportation agrees that it will use the vacated area in the future at its own risk.
- c. The City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the California Department of Transportation hereby waives and fully releases and forever discharges the City of Oakland and its officers, officials, representatives, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.).
- d. The California Department of Transportation understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR".
- e. The California Department of Transportation recognizes by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
- f. The California Department of Transportation shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements located within the vacated public right-of-way, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary

sewer piping, and storm water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission.

6. Pursuant to California Streets and Highways Code Section 8336, this order of vacation shall not be complete unless and until this Ordinance has been filed with and recorded by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNER

NOES -

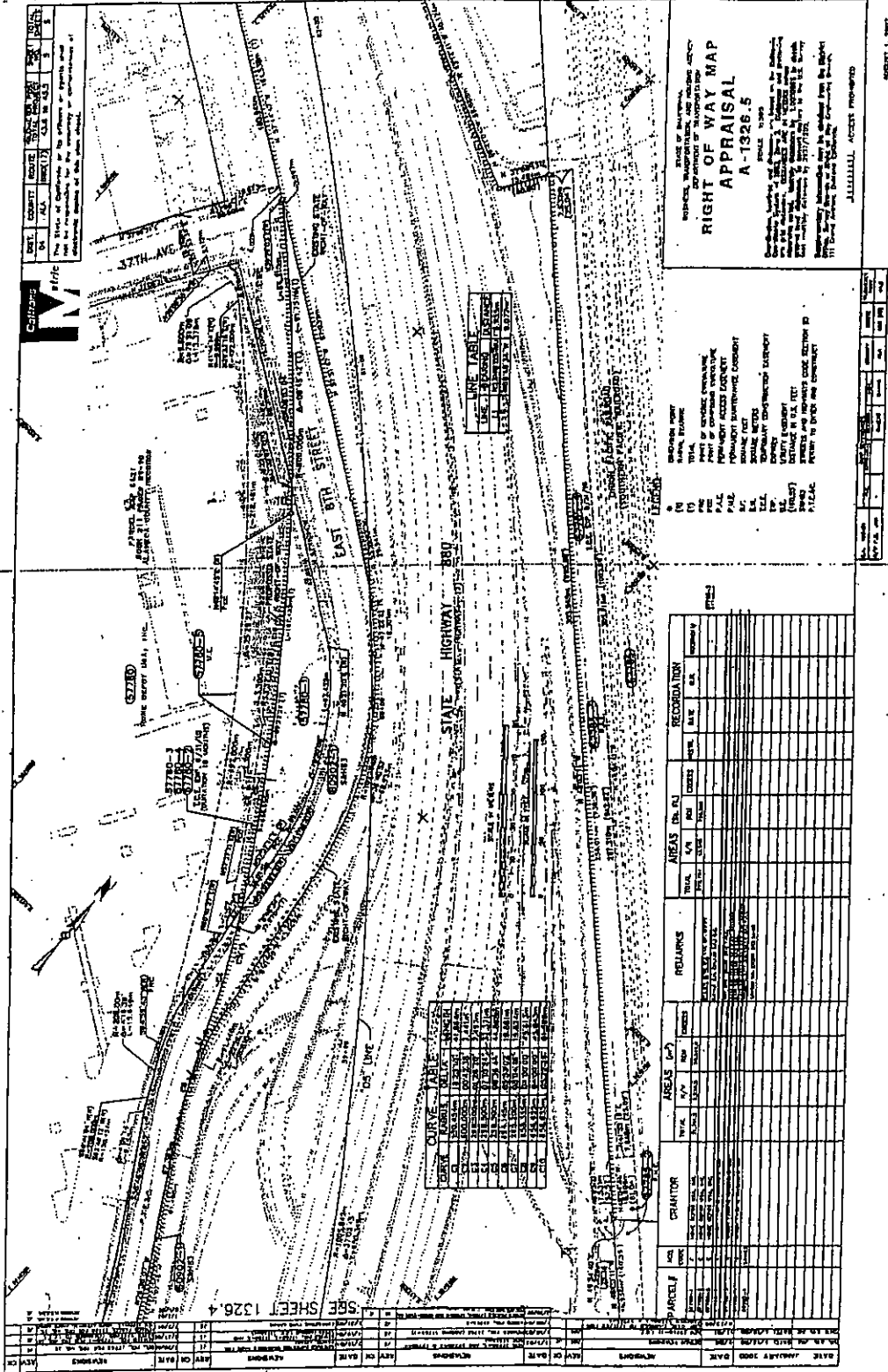
ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Limits of the Vacation and Realignment of East 8th Street Between the Intersections of 37th Avenue and Alameda Avenue



NOV 1, 1977

Exhibit B

DEPARTMENT OF TRANSPORTATION

DIVISION OF RIGHT OF WAY
111 GRAND AVENUE
P. O. BOX 23440, MS-11A
OAKLAND, CA 94623-0440
PHONE (510) 286-5388
FAX (510) 286-5379
TTY (800) 735-2929



Flex your power!
Be energy efficient!

March 13, 2009

4-Ala-880
Parcel 57780
E.A. 165422

City Engineer
Oakland, CA

Dear Sir or Madam:

re: Application for the Vacation of East Eighth Street

The State of California, Department of Transportation and Home Depot U.S.A., Inc. request and are in favor of the vacation of East Eighth Street (Street) in the City of Oakland (City), adjacent to our properties between 37th Avenue and the vicinity of 42nd Avenue.

Background:

The State of California, Department of Transportation (Interstate 880) and Home Depot U.S.A., Inc. (4000 Alameda Avenue, Oakland, CA) are the only property owners adjacent to the Street. The Department's High Street Seismic Retrofit Project and the City of Oakland's (City) 42nd Avenue and High Street Access Improvements Project (Projects) are two separate projects that require land from the Home Depot property. In order to construct both public improvement Projects and to do the least harm to Home Depot, the Department and City have agreed that it is necessary to vacate the Street.

The Department and City have entered into a Cooperative Agreement that approves and requires the vacation of the Street (see attachment).

Home Depot has requested and is in favor of the vacation of the Street to reduce the impact of the Projects on its property.

Sincerely,

MICHAEL CLANCY
Associate Right of Way Agent
R/W Acquisition Services
State of California, Department of Transportation

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By:
Name: Erika M. Strawn
Its: Sr. Attorney

Attachment

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON 6/30/08, 2008,
is between the STATE OF CALIFORNIA, acting by and through its Department of
Transportation, referred to herein as "STATE," and

CITY OF OAKLAND, a body politic and a
municipal corporation of the State of
California, referred to herein as "CITY."

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code Section 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State Highway System (SHS) within the City of Oakland.
2. STATE has a State Highway Project for improvements consisting of the Interstate Route 880/High Street Seismic Retrofit Project in the City of Oakland, referred to herein as "STATE PROJECT."
3. Project approval and environmental document (PA&ED) phase for STATE PROJECT has been completed.
4. CITY has a street improvement Project identified as the 42nd Ave/High Street Access Improvement Project, referred to herein as "CITY PROJECT."
5. PA&ED phase for CITY PROJECT has been completed.
6. Both STATE PROJECT and CITY PROJECT will require acquisition of a portion of property owned by Home Depot, Inc., referred to herein as HOME DEPOT ACQUISITION.
7. STATE PROJECT further requires the vacation of a portion of CITY street, specifically, East 8th Street
8. STATE and CITY will each fund fifty percent (50%) of the total cost of the EXPERT WITNESS APPRAISAL (EWA) of the required parcels, performed by an Expert Witness Appraiser.
9. STATE will fund one hundred percent of the costs, estimated to be \$9,500, associated with the vacation of East 8th Street.
10. CITY desires STATE to perform certain right of way services that include complete staff appraisals, prepare acquisition documents and acquire right of way hereinafter, STATE STAFF SERVICES, the terms and conditions of which are defined in Section I, Article 1.

STATE is agreeable to provide STATE STAFF SERVICES to CITY as reimbursed pursuant to section II for HOME DEPOT ACQUISITION work.

11. CITY is willing to fund fifty percent (50%) of STATE's estimated costs of STATE STAFF SERVICES performed on HOME DEPOT ACQUISITION.
12. The parties now define herein below the terms and conditions under which STATE STAFF SERVICES for HOME DEPOT ACQUISITION are to be performed and financed.

SECTION I

STATE AGREES:

1. To perform EWA and STATE STAFF SERVICES (complete staff appraisals, prepare acquisition documents and acquire right of way) that are required for the HOME DEPOT ACQUISITION.
2. To account for all costs for EWA and STATE STAFF SERVICES to be paid for by CITY for HOME DEPOT ACQUISITION pursuant to this Agreement.
3. To submit a billing in the amount of \$20,000 to CITY immediately following execution of this Agreement. Said figure represents STATE's estimated costs for CITY'S share of STATE STAFF SERVICES, paid in a lump sum, for HOME DEPOT ACQUISITION. Any portion of CITY's funds not expended by STATE shall be reimbursed to CITY upon the expiration or sooner termination of this Agreement.
4. To hire an Expert Witness Appraiser to appraise both CITY and STATE parcels on the HOME DEPOT ACQUISITION. The cost of said Expert Witness Appraiser is estimated to be \$25,000; however contract is for \$50,000 to cover any unexpected charges. Both CITY and STATE will get an original copy of the appraisal.
5. To pay for fifty percent (50%) of the total cost of the EWA for the CITY and STATE parcels. STATE shall pay the Appraisal firm for the total cost of appraisal and then submit a billing to CITY for CITY's proportional share of the total cost of the appraisal. STATE shall include a copy of the appraiser's invoice and a copy of the payment STATE submits to Expert Witness Appraiser.
6. To retain, or cause to be retained for audit by CITY's auditors, for a period of three (3) years from date of processing, the final detailed accounting statement and all STATE STAFF SERVICES records, and to make such materials available at STATE's District 4 Office. Copies thereof shall be furnished to CITY if requested by CITY.
7. To make application, provide all supporting documentation as required by Community and Economic Development Agency (CEDA) Building Services procedures and pay for 100% of costs associated with the vacation of East 8th Street, estimated by the CITY to be \$9,500 (i.e., \$5,000 for the Street Vacation and \$4,500 for the Street Search).
8. To complete all mapping and utility relocation work and provide a permanent public utility easement through the vacated East 8th Street corridor, and generally to coordinate and make arrangements with said utilities to ensure that said public utility easement is recorded with the appropriate property title documents.

SECTION II

CITY AGREES:

1. To deposit with STATE within twenty (20) business days of receipt of billing therefore which billing will be forwarded immediately following execution of this Agreement, the amount of \$20,000. Said figure represents the estimated costs for CITY's share of STATE STAFF SERVICES for HOME DEPOT ACQUISITION. STATE shall draw against these funds for the STATE STAFF SERVICES. In the event that the CITY's share of STATE STAFF SERVICES exceeds \$20,000, CITY will reimburse STATE pursuant to an amendment to this Agreement.
2. To reimburse STATE for fifty percent (50%) of the total cost, not to exceed \$25,000, of the EWA, performed by the Expert Witness Appraiser for the CITY and STATE parcels, within twenty (20) business days of receipt of STATE's billing therefor. In the event that the total cost of the EWA exceeds \$50,000, CITY will reimburse STATE pursuant to an amendment to this Agreement.
3. To open an escrow account and deposit into said escrow account, CITY's share of the acquisition capital cost for CITY parcel, when settlement has been reached. If CITY's parcel goes to condemnation, CITY shall pay the STATE's legal staff and all associated costs necessary to condemn CITY parcel.
4. To bear all responsibility and costs of property management for all ongoing business concerns associated with CITY parcel upon recordation of deed to City.
5. To pursue all necessary steps in processing the vacation of East 8th Street, including approval by the City Council.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. In the event that there is a dispute between CITY and STATE regarding the dollar amount, or portions of the dollar amount, on receipt of STATE's billing, STATE's District Director for District 4 will provide CITY with a written decision on resolution of the dispute within sixty (60) days of receiving written notice of a billing dispute from CITY. If CITY is not satisfied with the District Director's decision, CITY may appeal the District Director's decision to the State Local Programs Dispute Resolution Committee (LPDRC) for final resolution. The LPDRC will have 60 days to make a final resolution after receiving CITY written appeal. If the CITY disputes the LPDRC's decision, the CITY may seek the services of the Judicial Arbitration and Mediation Services, Inc. for mediation purposes to resolve the dispute.
3. The party that discovers Hazardous Materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by STATE or CITY PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by STATE or CITY PROJECT.

4. STATE, independent of HOME DEPOT ACQUISITION, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to HOME DEPOT ACQUISITION schedule and will pay all costs for HM-1 management activities.

CITY, independent of HOME DEPOT ACQUISITION, is responsible for any HM-1 found within existing CITY right of way. Any HM-1 management activities undertaken by CITY shall be performed with minimum impact to HOME DEPOT ACQUISITION schedule and CITY will pay all costs for HM-1 management activities.

5. If HM-2 is found within the limits of HOME DEPOT ACQUISITION, the public agency responsible for advertisement, award, and administration (AAA) of the STATE or CITY PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a STATE or CITY PROJECT construction cost.

6. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
7. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
8. If, during performance of right of way activities, new information is obtained which requires the preparation of additional environmental documentation for CITY PROJECT or STATE PROJECT to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks.
9. All administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for STATE PROJECT and CITY PROJECT will be held in confidence, pursuant to Government Code section 6254.5(e).

Parties will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete HOME DEPOT ACQUISITION without the written consent of the party authorized to release them, unless required or authorized to do so by law.

10. CITY agrees to obtain, as a CITY PROJECT cost, all necessary CITY PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing.
11. STATE agrees to obtain, as a STATE PROJECT cost, all necessary STATE PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing.
12. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental approvals for CITY PROJECT. The costs of said compliance and implementation shall be a CITY cost.
13. STATE shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s),

agreement(s), and/or environmental approvals for STATE PROJECT. The costs of said compliance and implementation shall be a STATE cost.

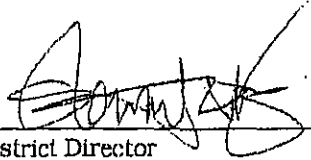
14. If there is a legal challenge to STATE PROJECT's environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for STATE PROJECT, all legal costs associated with those said legal challenges shall be a STATE cost.
15. If there is a legal challenge to the CITY PROJECT's environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for CITY PROJECT, all legal costs associated with those said legal challenges shall be a CITY cost.
16. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation or maintenance of State highways different from the standard of care imposed by law.
17. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that CITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
18. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
19. Prior to commencement of STATE STAFF SERVICES for HOME DEPOT ACQUISITION, CITY may terminate HOME DEPOT ACQUISITION and this Agreement in writing. CITY shall remain obligated to reimburse STATE, CITY share of all cost incurred by STATE under this agreement prior to its termination.
20. If termination of this Agreement is by mutual consent, CITY will bear fifty percent (50%) of all STATE STAFF SERVICES related costs incurred by STATE prior to termination and fifty percent (50%) of the total cost of the appraisal performed by the Expert Witness Appraiser.
21. This Agreement may be terminated or provisions contained herein may be altered, changed, or amended by mutual consent of the parties hereto by way of a written amendment to this Agreement.

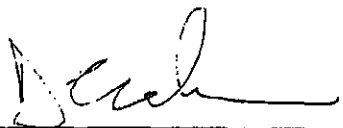
- 22. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- 23. Notwithstanding any provisions in this Agreement to the contrary, this Agreement shall terminate upon completion of all right of way activities for CITY PROJECT, or on December 31, 2012, whichever is earlier in time, however, the indemnification, legal challenge, environmental commitments, and audit clauses shall remain in effect until terminated or modified, in writing, by mutual agreement of the parties hereto.

STATE OF CALIFORNIA
Department of Transportation


CITY OF OAKLAND

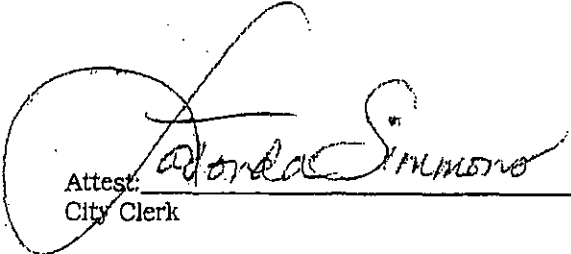
WILL KEMPTON
Director

By: 
Deputy District Director

By: 
City Administrator

Approved as to form and procedure:

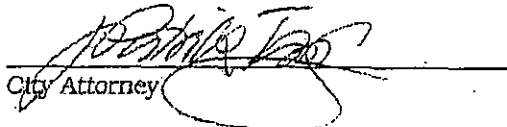

Attorney
Department of Transportation

Attest: 
City Clerk


Certified as to budgeting of funds:


District Budget Manager

Approved as to form:


City Attorney

Certified as to financial terms and conditions:


Accounting Administrator

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

[Signature]
City Attorney

2008 MAY 29 PM 4:44 RESOLUTION No. 81376 C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO EXECUTE A COOPERATIVE AGREEMENT AND AN AMENDMENT TO THE EXISTING FREEWAY AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), FOR THE HIGH STREET SEISMIC RETROFIT AND 42ND/HIGH STREET PROJECTS

WHEREAS, the California Department of Transportation (Caltrans) and the City each have ongoing projects in the area of High Street and 42nd Avenue, namely, the High Street Seismic Retrofit Project, the 42nd/High Street Access Improvement Project, respectively; and

WHEREAS, both projects have previously received project and environmental approvals; and

WHEREAS, both projects require the acquisition real property from parcels adjacent to each project site; and

WHEREAS, Caltrans' High Street Seismic Retrofit Project requires that the City vacate a portion of East 8th Street, east of 37th Avenue, to accommodate the reconfigured offramp location; and

WHEREAS, it is in the best interest of Caltrans and the City to consolidate the acquisition of said property by a single party, namely, Caltrans, to maximize efficiency of efforts and costs, and to minimize disruption to the affected property owner; and

WHEREAS, City staff will undertake proceedings to vacate a portion of East 8th Street, east of 37th Avenue, as a separate Council action, as said street will become unnecessary for general circulation of traffic after construction of the two projects; and

WHEREAS, Caltrans and the City wish to enter into cooperative agreement for the acquisition of property and proposed street vacation; and

WHEREAS, sufficient funding is available in the Caltrans Grant Fund (2140), 42nd Avenue High Street Right of Way Project (C98530); and

WHEREAS, Caltrans and the City have previously entered into a Freeway Agreement, dated September 18, 1947, relating to that portion of State Highway Route 880 from High Street to Oak Street; and

CERTIFIED COPY

I certify that this is a true and authentic copy of this document.

[Signature]
Office of the City Clerk

6/30/08
Date

WHEREAS, said Freeway Agreement will need to be amended to reflect the reconfiguration of the reconstructed freeway and City streets; now, therefore, be it

RESOLVED: that the City Administrator or her designee hereby be authorized to execute a cooperative agreement and an amendment to the existing freeway agreement with the California Department of Transportation (Caltrans), for the High Street Seismic Retrofit and 42nd/High Street projects; and be it

FURTHER RESOLVED: that the City Administrator or her designee be authorized to execute any additional documents or funding agreements necessary for the completion of the City's 42nd/High Street Access Improvement Project

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 17, 2008, 20__

PASSED THE FOLLOWING VOTE:

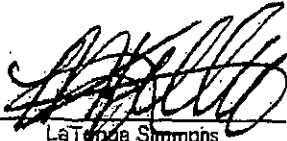
AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE – 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST:



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

CERTIFIED COPY

I certify that this is a true and authentic copy of this document.


Office of the City Clerk

Date

6/30/08

Exhibit C

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZBIEGGER, Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF RIGHT OF WAY
111 GRAND AVENUE
P. O. BOX 23440 - MS 11A
OAKLAND, CA 94623-0440
PHONE (510) 286-5388
FAX (510) 286-5379
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

THIS COPY FOR
M. Clancy

May 14, 2008

4-A1a-880
Parcels 57780-1, 57780-2, 57780-5
E.A. 165422

Home Depot U.S.A., Inc.
Attn: Ann K. Jerhoff, Counsel
Real Estate Law Group
3800 West Chapman Avenue
Orange, CA 92868

Dear Ms. Jerhoff:

Attached is your copy of the Right of Entry agreement, which has now been executed on behalf of the State of California.

Your cooperation is appreciated.

Sincerely,

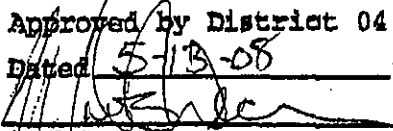
Original Signed By:

MICHAEL CLANCY
Associate Right of Way Agent
Acquisition Services

Attachment

cc: Home Depot U.S.A., Inc.
Attn: Vice President, Real Estate Law Group
Store No. 1007
2455 Paces Ferry Road, C-20
Atlanta, GA 30339-4024

State of California
Department of Transportation
Mr. Bijan Sartipi
District Director
District 04
111 Grand Avenue
Oakland, CA 94612

Approved by District 04
Dated 5-13-08

MARK L. WEAVER
District Office Chief
R/W Acquisition/Utility Services

Dear Mr. Sartipi:

Permission is hereby granted to enter upon our land, at 4000 Alameda Ave., Oakland CA as indicated by sub-parcel numbers 57780-1, 57780-2 & 57780-5 on the attached Appraisal Maps A-1326.0a, A-1326.4 & A-1326.5 dated March 20, 2007 for the purpose of constructing or improving a public highway and accomplishing all necessary incidents thereto.

It is understood that this permission is not a waiver in any way of the right of compensation for such land or of any remedy authorized by law to secure payment therefor. Home Depot U.S.A., Inc., a Delaware corporation (referred to herein variously as "Owner", "Grantor", and "Home Depot") acknowledges it has been advised of its right to receive immediate compensation and has waived that right, agreeing to be compensated at a later date with interest.

This permission is granted in consideration of the location, improvement and construction of such highway and incidents thereto, which it is understood is required by the State of California, Department of Transportation ("State" or "the Department"), with the understanding that you will hereafter without unnecessary delay, negotiate with the undersigned, and any other person, if any, having any right, title or interest in said property, to agree upon terms of compensation and that, if any agreement cannot be reached you will promptly commence eminent domain proceedings, including a deposit of funds to support an Order for Possession, to have such compensation determined.

Section 1245.235 of the Code of Civil Procedure requires the State of California, Department of Transportation, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or others of record. (If an offer has not been made, an appraisal will be prepared as soon as practicable and an offer made of the full amount of such appraisal.)

By granting this irrevocable right to possession and use of the parcels to State, Owner agrees to the following: (1) Owner specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure ~~Section 1240.030 and the adoption of the resolution of necessity by the California Transportation~~ Commission authorizing the taking of the property described in Exhibit A; (2) Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit A; and (3) in any eminent domain action filed by State to acquire the property described in Exhibit A, Owner shall not challenge State's right to take such property, and the only issue shall be the amount of just compensation for the property.

It is understood that the State of California, Department of Transportation, will pay interest from the date of execution of this Right of Entry on the just compensation paid by the State of California, Department of Transportation. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

The State agrees to indemnify and hold harmless Grantor from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages arising from State's operations under this agreement and State will, at its option, either repair or pay for such damage. The State shall either fill any excavations made by the State in the subject property at the end of each construction day or take such steps, consistent with standard engineering and construction practices, as are reasonably necessary to secure and limit public access to the excavation areas.

It is understood and agreed by and between the parties hereto that this Right of Entry gives the State possession of the requirement, as described on the attached map, for the State's project and that possession of the requirements for the City's project is not required at this time.

The State made a written offer of \$1,778,000 to Home Depot for the State's requirement on March 15, 2005. Based on the reduced requirement that is described on the attached map, the State's appraisal is being revised. This reduced amount will be the basis of the State's future offer to compensate Home Depot for the reduced requirement, improvements and damages, if

any. The parties acknowledge and agree that the State's final written offer to Home Depot will include the Initial Pylon Sign Payment and the Initial Parking Lot Payment (as those terms are defined below); and that so long as the State pays the Initial Pylon Sign Payment and the Initial Parking Lot Payment to Home Depot in accordance with the terms of this Right of Entry, the Initial Pylon Sign Payment and the Initial Parking Lot Payment will be deducted from the final payment to be paid by the State to Home Depot for the State's requirement.

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 as described on the attached map, for the State's project, including the right to remove and dispose of improvements, shall commence on the date of execution of this Right of Entry.

It is understood and agreed by and between the parties hereto that the order of construction of the State's project will be (1) the reconfiguration of the parking lot by Home Depot to accommodate the re-establishment of the pylon sign; (2) re-establishment of the approximately 100 foot pylon sign by Home Depot as described hereafter; (3) relocation of utilities by the State and its agents onto the utility corridor identified on the attached map as sub-parcel 57780-5, restricting use of that portion of the parking; (4) grading and paving of sub-parcel 57780-5 by the State and its agents after utility relocation has been completed; and (5) the re-establishment of the parking lot by Home Depot after the completion of the State's project and the East 8th Street vacation.

It is understood and agreed by and between the parties hereto that the Department and Home Depot will enter into a Right of Way Contract to compensate Home Depot for the actual cost to re-establish the pylon sign onto their remainder parcel, including without limitation soft costs such as permit fees and engineering fees. An initial payment of \$200,000.00 will be made to Home Depot within sixty (60) days after the full execution of this Right of Entry by the State and Grantor (the "Initial Pylon Sign Payment"). Said Contract will be handled separate from the land acquisition and related costs. Home Depot will re-establish said sign as soon as possible after the execution of the beforementioned contract. As discussed above, the Initial Pylon Sign Payment will not be included in the State's final compensation.

It is understood and agreed by and between the parties hereto that it is the intent of the State to make its best effort to coordinate the aforementioned utility relocations so that they are completed within 18 months of their commencement, as set forth in the Construction Schedule attached hereto as Exhibit B ("Construction Schedule").

It is understood and agreed by and between the parties hereto that the Department and Home Depot will enter into a Right of Way Contract to compensate Home Depot for the actual costs to relocate site utilities, meters and light poles at parcel 57780-5 to the extent necessary to assure their continued functionality and security during the State's performance of its work, and to re-establish their parking lot on the surface of the aforementioned utility corridor, parcel 57780-5, and the vacated portion of East 8th Street as described hereafter, including without limitation soft costs such as permit fees and engineering fees, and all attorneys' fees (up to a maximum amount of \$47,000.00) incurred by Home Depot with respect to the preparation and negotiation of this Right of Entry and the other documents and instruments leading up to, or resulting from, this Right of Entry and the State's acquisition of an easement across the subject property (provided,

however, that the foregoing provisions of this sentence shall not obligate the State to compensate Home Depot for any attorneys' fees arising from litigation between Home Depot and the State with respect to the valuation of the easement to be acquired by the State). An initial payment of \$120,000.00 will be made to Home Depot upon the full execution of this Right of Entry by the State and Grantor (the "Initial Parking Lot Payment"). Said Contract will be handled separate from the land acquisition and related costs. Home Depot will be responsible for re-establishing said parking lot. As discussed above, the Initial Parking Lot Payment will not be included in the State's final compensation.

It is further understood and agreed by and between the parties hereto that the City of Oakland (City) and the Department are jointly working toward the closure of East 8th Street between 37th Avenue and Alameda Avenue. The Department, City and Home Depot will enter into a global settlement to transfer the property rights required for both the City's and the Department's projects. Said settlement will provide for the closing of East 8th Street and deeding the excess, vacated East 8th Street to Home Depot with a reservation for the necessary easements to maintain said excess as a public utility corridor. Said reservation may include underground, surface and aerial utility easements. Every effort will be made to place surface facilities in such a way to be consistent with Home Depot's parking lot. Said reservation will primarily be for underground utilities and will not affect Home Depot's right to use said excess area as an "at grade" parking lot. The aforementioned limitations on said reservations will be included in the utility easement portion of the grant deeds transferring the project requirements for both the City and Department's projects.

The State shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of the State and shall keep Grantor's property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. If any lien is filed, the State shall cause such lien to be released and removed within twenty (20) days after the date of filing, and if the State fails to do so, Grantor, at the State's expense, may take such action as may be necessary to remove such lien, without the duty to investigate the validity of such lien. Prior to entry upon Grantor's property, the State shall provide Grantor with evidence of commercial general liability insurance (i.e., a certificate of insurance), naming Grantor as an additional insured which covers the entry upon Grantor's property by the State and/or the State's representatives and agents. Such insurance shall have a limit of liability of not less than Three Million Dollars (\$3,000,000.00) per occurrence and in the aggregate and be on an "occurrence" and not a "claims made" basis. Home Depot acknowledges that the State is self insured. Proof of insurance is attached hereto as Exhibit C.

Should any dispute arise over the interpretation of this Right of Entry or should any action be brought to enforce the terms of this Right of Entry, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs.

This Right of Entry contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Right of Entry shall be of no force or effect. This Right of Entry may be amended only by a written instrument signed by both Grantor and the State.

This Right of Entry may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

All notices given under this Right of Entry shall be in writing and shall be transmitted either by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office (postage prepaid, certified mail, return receipt requested). Any such notices shall be effective upon delivery. Notices of the respective parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

To the State: Department of Transportation, District 4
Attn: Michael Clancy, MS 11A
111 Grand Avenue, Oakland, CA 94612
P. O. Box 23440
Oakland, CA 94623-0440

To Grantor: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, C-20
Atlanta, GA 30339-4024
Attention: Vice President - Real Estate Law Group
Store No.: 1007

With a copy to: Home Depot U.S.A., Inc.
3800 West Chapman Avenue
Orange, CA 92868
Attention: Divisional Corporate Counsel -
Real Estate Law Group

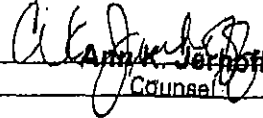
The failure to insist upon strict performance of any of the terms, covenants, conditions and agreements contained herein shall not be deemed a waiver of any rights or remedies of the failing party, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants contained herein by the same or any other person or entity.

Except as expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the subject property or any other portion of Grantor's property to the general public

or for any public purpose whatsoever, it being the intention of the parties that this Right of Entry shall be strictly limited to and for the purposes herein expressed.

Sincerely,

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: 
Name: Ann K. Jorhoff
Its: Counsel

Address: Home Depot, U.S.A.
3800 Chapman Avenue
Orange, CA 92868

- Exhibit A: Description of Subject Property
- Exhibit B: Construction Schedule
- Exhibit C: Proof of State's Insurance

DM *PMK*
5/7/08


RECOMMENDED FOR APPROVAL:


By: 
MICHAEL CLANCY
Right of Way Agent

ACCEPTED:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: 
JASPREET SINGH
District Branch Chief
R/W Acquisition Services "B"

By: 
R. A. MACPHERSON
Deputy District Director
Right of Way

By: 
STANLEY GEE
Project Manager
Project Management East - Ala

Construction Schedule

Preliminary Construction Schedule (Parcel No. 57780 Home Depot)

Prior to Begin Construction on State's Project

0-18 Months (Relocation by Utility Companies)

(Note: Utility relocation schedule is preliminary. For final schedule, see D4 - R/W Utilities.)

• East Bay Municipal Utility District (EBMUD) will relocate its 48" sanitary sewer line. The final

connections will be outside of the Home Depot easement area, as soon as possible, during the dry season.

• EBMUD and all other utilities will repave and stripe after their respective relocations

• All other utilities relocate into the easement area after EBMUD is finished.

Begin Construction on State's Project

0-8 Months (Work Not Impacting Home Depot)

8-13 Months (Work Impacting Home Depot)

- East 8th Street closed
- State demolishes East 8th and land acquired in fee from Home Depot.
- State relocates City of Oakland's sewer onto the easement area.
- State builds and finishes retaining wall on southeast side of Home Depot.
- State finishes curb and gutter at East 8th Street closures.
- All planned major construction on Home Depot parking lot easement area completed.

Approximately 13 months from begin construction on State's project, work outside the Home Depot property completed.

NOTICE AND DIGEST

ORDINANCE CONDITIONALLY VACATING A PORTION OF EAST 8th STREET BETWEEN THE INTERSECTIONS OF 37th AVENUE AND ALAMEDA AVENUE TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SEISMIC RETROFITTING OF INTERSTATE 880 AT HIGH STREET

This ordinance would abandon (vacate) the full width and length of a portion of the public right-of-way of East 8th Street without cost to the California Department of Transportation (Caltrans) to facilitate the widening Interstate 880 for the seismic retrofitting of the elevated overcrossing at High Street. Caltrans will construct an adjoining re-alignment of East 8th Street without cost to the City.