Resolution No. 04-0807

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE ACQUISITION BY THE CITY OF STOCKTON OF A PERMANENT EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT FROM STOCKTON EAST WATER DISTRICT ("SEWD"), VIA EASEMENT DEEDS, HEREINAFTER MORE PARTICULARLY DESCRIBED, AUTHORIZING EXECUTION OF THE AGREEMENTS AND RELATED DOCUMENTS FOR THE SOUTH STOCKTON AQUEDUCT PROJECT AND AUTHORIZING THE CITY MANAGER TO TAKE THE ACTIONS NECESSARY TO CARRY OUT THE PURPOSE AND INTENT OF THIS RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. It is hereby declared that the City's acquisition of a Permanent Easement and a Temporary Construction Easement from STOCKTON EAST WATER DISTRICT, via Easement Deeds, for the South Stockton Aqueduct Project is necessary for a public purpose, to wit:

   WATER TRANSMISSION.

2. That the City of Stockton hereby authorizes its acquisition of a Permanent Easement and a Temporary Construction Easement from STOCKTON EAST WATER DISTRICT, via Easement Deeds, for the South Stockton Aqueduct Project, more particularly described in the "Acquisition of Easement Agreement" ("Agreement"), which is attached as Exhibit A and incorporated by this reference.

3. That the transfer of real property for valuable consideration of this acquisition is hereby authorized and approved as stated in the Agreement.

4. That the specific terms and conditions of this acquisition are as expressly provided in the attached Agreement and incorporated by this reference.

5. The transfer of improvements, constructed by the City of Stockton, to Stockton East Water District is not a gift of public property because it is necessary and appropriate that SEWD retain operational control and ownership of facilities within the water treatment plant facility and because the improvements have no value except for the sole benefit of the City of Stockton.

6. That with regard to environmental clearance, an Initial Study/Mitigated Negative Declaration (IS35-02) together with the "South Stockton Aqueduct Project
Findings Report" was adopted by the City Council on November 30, 2004, as Resolution No. 04-0780.

7. That the City Manager is hereby authorized and directed to execute the Agreement and any documents necessary to carry out the purposes hereof, and the City Attorney is directed to cause the recordation of the appropriate documents.

PASSED, APPROVED and ADOPTED ________________

DEC 14 2004

____________________________
GARY A. Podesto, Mayor
of the City of Stockton

ATTEST:

____________________________
Katherine Gong Meissner
City Clerk of the City of Stockton
ACQUISITION OF EASEMENT AGREEMENT

THIS ACQUISITION OF EASEMENT AGREEMENT ("Agreement"), is made this ___ day of ___________, 2004 by and between Stockton East Water District ("Grantor") and the City of Stockton ("Grantee") (collectively referred to herein as the "Parties").

RECITALS

A. Grantor owns certain real property in the County of San Joaquin, State of California, commonly referred to as the Stockton East Water District Treatment Plant with an Assessor’s Parcel Number (APN 107-170-34), and more particularly shown on Exhibit “A” attached hereto and incorporated herein (the “Grantor Property”).

B. Grantee is planning to construct a pipeline, known as the South Stockton Aqueduct, to deliver treated surface water from the Grantor Property to areas in South Stockton (the “Project”).

C. A portion of the Project is to be located on the Grantor Property, and is to connect to Grantor’s existing 48” diameter pipeline located on the Grantor Property.

D. Grantee desires to acquire and confirm certain rights in the Grantor Property in order to access the Grantor Property and to construct the Project, and Grantor has agreed to grant Grantee said rights subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of these premises and the mutual covenants set forth below, the Parties agree as follows:

1. Acquisition of Easements. The Grantor agrees to grant Grantee the following Easements:

   1.1 A non-exclusive easement over and across the Grantor Property for temporary ingress and egress and for the purpose of accessing the Grantor Property and constructing a portion of the Project on Grantor Property. The foregoing easement (referred to herein as the "Temporary Construction Easement") is more particularly described in Exhibit “B” attached hereto and incorporated herein.

   1.2 A non-exclusive easement over that portion of the Grantor Property described in Exhibit “C” attached hereto and incorporated herein (referred to herein as the "Permanent Easement") allowing Grantee to use that portion of the Project located on Grantor Property following the completion of construction of the Project.

Each easement shall be evidenced by a Grant of Easement recorded in the Official Records of San Joaquin.

EXHIBIT "A"
2. **Reversion.** In the event Grantee abandons the pipeline, the Permanent Easement shall terminate and revert to Grantor. Grantee shall execute and record appropriate documentation to convey the reversion to Grantor in the event of such termination.

3. **Restoration.** Upon completion of construction of the Project and termination of the Temporary Construction Easement, the Grantor Property will be restored as nearly as possible to its original condition, including reseeding, and the replacement of fencing and irrigation systems.

4. **Pipeline Location.** The preliminary pipeline alignment is shown on the topography maps prepared by Thompson-Hysell Engineers. The final pipeline alignment will be determined by field conditions so as to minimize impact to the Grantor Property.

5. **Non-Exclusive.** The easements are nonexclusive. Grantor retains the right to make any use of the easements that does not interfere unreasonably with Grantee’s free use and enjoyment of the easements. Grantee agrees to cooperate with Grantor and others with rights to use the easements as may be necessary.

6. **Maintenance of Grantor Property.** Grantee agrees that it will not commit waste on the Grantor Property, nor maintain a nuisance thereon, nor use, or permit the Grantor Property to be used in an unlawful manner. In addition, City agrees to maintain the Grantor Property in a generally weed-free condition, and to prevent the accumulation of trash during the time when Grantee is constructing said Project on Grantor Property. Once the improvements are completed on the Grantor Property, the Grantor shall resume the maintenance of the Grantor Property.

7. **Term of Temporary Construction Easement.** The Temporary Construction Easement granted under this Agreement is temporary and shall terminate one year after the completion of Grantee’s construction activities on the Grantor Property. Upon termination of the term of this Temporary Construction Easement, Grantor and Grantee shall join in executing and recording a notice of termination of the easement.

8. **Ownership.** Upon completion of the Project, title to that portion of the Project located on Grantor Property and not within the Permanent Easement shall be vested in Grantor.

9. **Notice of Completion/Acceptance.** Within ten (10) days of completion of the Project, Grantor shall execute and record the Notice of Completion/Acceptance, attached hereto as Exhibit “D”.

10. **Insurance.** Grantee and all of Grantee’s contractors, subcontractors, or sub-subcontractors employed or working on the Project shall name Grantor as an additional insured under their respective insurance policies.
11. **Liens.** Grantee shall at all times indemnify and save Grantor harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job in connection with Grantee’s performance hereof, including any costs and expenses for attorneys’ fees and all incidental or consequential damages resulting to Grantor from such claims. Further, in case suit on any such claim is brought, Grantee shall defend said suit at its own cost and expense, and will pay and satisfy only such liens or judgments as may be established by decision of a court in said suit and further hold harmless Grantor from any personal liability therefor.

12. **Indemnification.** To the fullest extent permitted by law, Grantee shall indemnify, defend, protect and hold completely harmless Grantor, its successors and assigns, Grantor’s personal representatives, its employees, agents, and officers (collectively, the “Indemnitees”), and their respective successors and assigns, from and against any and all claims, demands, losses, proceedings, damages, causes of action, personal injury, death, or property damage, liabilities, costs or expenses (including, but not limited to, attorneys’ fees), in any way arising from, out of, in connection with or related to the use of the Grantor Property referred to in this Agreement by Grantee, its agents, representatives, employees, servants, contractors, subcontractors, suppliers, licensees, invitees, or anyone directly or indirectly employed by any of them. Grantee shall defend each Indemnitee, through counsel reasonably approved by such Indemnitee in any proceeding or arbitration brought against the Indemnitee by reason of any such claim described above.

13. **No Partnership.** Nothing contained in this Agreement shall be construed as making Grantor and Grantee joint venturers or partners.

14. **Entire Agreement.** This Agreement contains and integrates the entire agreement of the parties with respect to the subject matter hereof, and supersedes all negotiations and previous agreements, by all the then-current owners of the properties.

15. **Binding on Assignees.** This Grant shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties hereto.

16. **Amendments.** This Agreement supersedes all prior negotiations of the Parties hereto and contains the entire agreement of such parties on the matters covered hereby. This Agreement may not be modified orally, or in any other manner, than by an agreement in writing signed by each of the Parties hereto.

17. **Enforcement.** Enforcement of this Agreement may be by legal proceedings against any person violating any restriction, covenant, condition, or agreement contained herein, either to restrain or enjoin such violation or to recover damages; provided, however, that no such covenant or any such similar right or privilege may be enforced by legal action or otherwise by any persons whatsoever except Grantor and/or Grantee, and their respective successors and assigns.
18. **No Waiver.** Failure by either party to enforce any covenant, restriction or other provision of this Agreement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision of this Agreement shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision of this Agreement or seek redress for the breach thereof. The waiver by either party hereto of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provision hereof.

19. **Attorneys' Fees and Costs.** Should any litigation or other proceedings commence between the Parties to the Agreement concerning the rights and duties of any party pursuant to, related to, or arising from this Agreement, the prevailing party in such litigation or other proceedings shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorneys' fees and costs, including attorneys' fees and costs on appeal, of such litigation or other proceedings including, without limitation, any survey costs to determine inundation and/or erosion damage.

20. **Severability.** In the event any term or provision of this Agreement shall be held to be unenforceable for any reason whatsoever by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term or provision hereof.

21. **Captions.** The captions appearing at the commencement of paragraphs hereof are descriptive only and for convenience and reference. Should there be any conflict between such caption and the paragraph at the head of which it appears, the paragraph and not such caption shall control and govern in the construction of this Agreement.

22. **No Reliance.** Each party represents and acknowledges that in executing this Agreement, he, she, or it does not rely on and has not relied upon any representation or statement made by the other party or any of their attorneys with regard to the subject matter, basis, or effect of this Agreement other than those specifically stated in this Agreement.

23. **Construction.** This Agreement is drafted by counsel for the Grantor as an accommodation to the Parties and is the product of deliberation between counsel for all parties. In the event of any dispute surrounding its interpretation, this Agreement shall not be construed against the drafter, and the Parties expressly waive any right to assert such rule of construction.

24. **Advice of Counsel.** In entering into this Agreement, the Parties represent that they have had the opportunity to discuss this Agreement with their counsel, that the terms of this Agreement have been completely read by the Parties and that they understand those terms, and that the Parties voluntarily accept those terms and agree to enter into this Agreement.
25. **Choice of Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

26. **Facsimile Signatures.** The Parties agree that the facsimile signature of a party shall, when delivered by counsel for that party to counsel for the other party, bind the party to this Agreement as if an original signed Agreement had been delivered.

27. **Counterparts.** This Agreement may be signed in counterparts by the Parties, which, taken together, shall be deemed to constitute one and the same Agreement.

28. **Notices.** All notices and demands shall be given in writing either by personal delivery against receipted copy, recognized overnight delivery service, certified (or registered) mail, postage prepaid and return receipt requested. Notices shall be considered received by the addressee upon actual delivery to the required address, as hereinafter provided. Unless either party receives a change of address in the manner provided in this paragraph, notices, if to Grantor, shall be addressed to:

Stockton East Water District  
Attn: General Manager  
6767 East Main Street  
P.O. Box 5157  
Stockton, CA 95215-0157

and, if to Grantee, shall be addressed to:

Stockton Municipal Utilities Department  
Attn: Director of Municipal Utilities  
2500 Navy Drive  
Stockton, CA 95206

Notice may also be given by facsimile, but such notice will be deemed delivered only if the sender is in possession of a verification or receipt from the addressee, which the addressee shall be obliged to provide if the facsimile copy is timely and legibly received.
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

"Grantor"

STOCKTON EAST WATER DISTRICT

By: ____________________________
    Thomas McGurk
    Its:  President

"Grantee"

THE CITY OF STOCKTON,
a municipal corporation

By: ____________________________
    Mark Lewis
    City Manager of the City of Stockton

APPROVED AS TO FORM

By ____________________________
    City Attorney
Exhibit “A”

Map of the Grantor Property
PIPELINE ON NORTH-EAST OF CANAL TO BE VESTED IN STOCKTON EAST WATER DISTRICT

Sacramento and San Joaquin Drainage District SW R/NE 3249 0.R. 428

CENTERLINE OF STOCKTON DIVERTING CANAL

PIPELINE

PERMANENT EASEMENT TO BE GRANTED TO CITY OF STOCKTON

MAIN STREET

BRIDGE

103-250-02

VICINITY MAP
NO SCALE

101-170-34 STOCKTON EAST WATER DISTRICT 4087-O.R.-512

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

DATE: DRAWING NO.
1 of 1
Exhibit “B”

Legal Description of the Temporary Construction Easement
LEGAL DESCRIPTION FOR A
TEMPORARY CONSTRUCTION EASEMENT
FOR SOUTH STOCKTON AQUEDUCT
APN 101-170-34

Being all that portion of section 76 of C.M. Weber Grant,
El Rancho Del Campo De Los Franceses, San Joaquin County,
California, described as follows:

COMMENCING at the intersection of the northerly right-of-
way line of Main Street (Formerly Copperopolis Road) an 80-
foot wide public road with the easterly right-of-way line
of the Sacramento and San Joaquin Drainage District Right-
of-way by deed recorded in Book of Official Records, Volume
3249, Page 428, San Joaquin County Records; thence along
said easterly right-of-way line of the Sacramento and San
Joaquin Drainage District Right-of-way,
North 56°08'47" West 192.38 feet to the TRUE POINT OF
BEGINNING of this description; thence South 33°48'27" West
205.60 feet to the centerline of the Stockton Diverting
Canal and the southerly right-of-way line of the Sacramento
and San Joaquin Drainage District; thence along said
southerly right-of-way line of the Sacramento and San
Joaquin Drainage District, North 56°42'45" West 40.00 feet;
thence North 33°48'27" East 287.09 feet; thence
North 56°11'33" West 34.99 feet; thence
North 78°41'33" West 20.86 feet; thence
South 11°18'27" West 25.00 feet; thence
North 78°41'33" West 84.65 feet; thence
North 56°11'40" West 365.91 feet; thence
North 11°11'40" West 95.66 feet; thence
North 39°22'11" East 66.75 feet; thence
South 50°37'49" East 21.17 feet; thence
South 11°11'40" East 94.79 feet; thence
South 56°11'40" East 326.06 feet; thence
South 78°41'33" East 100.53 feet; thence
South 56°11'33" East 82.94 feet; thence
South 33°48'27" West 121.13 feet to the TRUE POINT OF
BEGINNING.

Containing 50095 Sq. Ft. or 0.361 acres

H:\DNG\2943\Legal Descriptions\apn 101-170-34 TCE.doc
11/24/2004
Project: Aqueduct
Description:
Number of Lots: 16
Report Created by: jgb

<table>
<thead>
<tr>
<th>Direction</th>
<th>Distance</th>
<th>Northing</th>
<th>Easting</th>
</tr>
</thead>
<tbody>
<tr>
<td>apn 101-170-34 TCE</td>
<td>0</td>
<td>2171509.2811</td>
<td>6356630.7616</td>
</tr>
<tr>
<td>Courses: 16</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S 33°48'27&quot; W</td>
<td>205.60'</td>
<td>2171338.4477</td>
<td>6356516.3661</td>
</tr>
<tr>
<td>N 56°42'45&quot; W</td>
<td>40.00'</td>
<td>2171360.4022</td>
<td>6356482.9277</td>
</tr>
<tr>
<td>N 33°48'27&quot; E</td>
<td>287.09'</td>
<td>2171598.9472</td>
<td>6356642.6649</td>
</tr>
<tr>
<td>N 56°15'33&quot; W</td>
<td>34.99'</td>
<td>2171618.4138</td>
<td>6356613.5943</td>
</tr>
<tr>
<td>N 78°41'33&quot; W</td>
<td>20.86'</td>
<td>2171622.5032</td>
<td>6356593.1428</td>
</tr>
<tr>
<td>S 11°18'27&quot; W</td>
<td>25.00'</td>
<td>2171597.9885</td>
<td>6356588.2409</td>
</tr>
<tr>
<td>N 78°41'33&quot; W</td>
<td>84.65'</td>
<td>2171614.5855</td>
<td>6356505.2378</td>
</tr>
<tr>
<td>N 56°11'40&quot; W</td>
<td>365.91'</td>
<td>2171818.1713</td>
<td>6356201.1889</td>
</tr>
<tr>
<td>N 11°11'40&quot; W</td>
<td>95.66'</td>
<td>2171912.0110</td>
<td>6356182.6176</td>
</tr>
<tr>
<td>N 39°22'11&quot; E</td>
<td>66.75'</td>
<td>2171963.6148</td>
<td>6356224.9598</td>
</tr>
<tr>
<td>S 50°37'49&quot; E</td>
<td>21.17'</td>
<td>2171950.1885</td>
<td>6356241.3228</td>
</tr>
<tr>
<td>S 11°11'40&quot; E</td>
<td>94.79'</td>
<td>2171857.2020</td>
<td>6356259.7252</td>
</tr>
<tr>
<td>S 56°11'40&quot; E</td>
<td>326.06'</td>
<td>2171675.7888</td>
<td>6356530.6599</td>
</tr>
<tr>
<td>S 78°41'33&quot; E</td>
<td>100.53'</td>
<td>2171656.0773</td>
<td>6356629.2394</td>
</tr>
<tr>
<td>S 56°11'33&quot; E</td>
<td>82.94'</td>
<td>2171609.9274</td>
<td>6356698.1576</td>
</tr>
<tr>
<td>S 33°48'27&quot; W</td>
<td>121.13'</td>
<td>2171509.2811</td>
<td>6356630.7616</td>
</tr>
</tbody>
</table>

Perimeter: 1973.12  Area: 50095 Sq. Ft., 1.150 Acres

Error of Closure:  N 25°18'56" E  0.000'
Error North:  0.000
Error East:  0.000
Precision:  1 in 143093708
Exhibit “C”

Legal Description of the Permanent Easement
LEGAL DESCRIPTION FOR A
PERMANENT EASEMENT
FOR SOUTH STOCKTON AQUEDUCT
APN 101-170-34

Being all that portion of section 76 of C.M. Weber Grant,
El Rancho Del Campo De Los Franceses, San Joaquin County,
California, described as follows:

COMMENCING at the intersection of the northerly right-of-
way line of Main Street (Formerly Copperopolis Road) an 80-
foot wide public road with the easterly right-of-way line
of the Sacramento and San Joaquin Drainage District Right-
of-way by deed recorded in Book of Official Records, Volume
3249, Page 428, San Joaquin County Records; thence along
said easterly right-of-way line of the Sacramento and San
Joaquin Drainage District Right-of-way, North 56°08'47"
West 232.38 feet to the TRUE POINT OF BEGINNING
of this description; thence South 33°48'27" West 205.99 feet to the
centerline of the Stockton Diverting Canal and the
southerly right-of-way line of the Sacramento and San
Joaquin Drainage District; thence along said southerly
right-of-way line of the Sacramento and San Joaquin
Drainage District, North 56°42'45" West 25.00 feet; thence
North 33°48'27" East 262.32 feet; thence
North 56°11'33" West 5.01 feet; thence North 78°41'33" West
15.88 feet; thence North 11°18'27" East 25.00 feet; thence
South 78°41'33" East 20.86 feet; thence
South 56°11'33" East 34.99 feet; thence
South 33°48'27" West 81.10 feet to the TRUE POINT OF
BEGINNING.

Containing 7827 Sq. Ft. or 0.181 acres
LINE DATA TABLE:

<table>
<thead>
<tr>
<th>NO.</th>
<th>BEARING</th>
<th>LENGTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>N56°42'45&quot;W</td>
<td>25.00'</td>
</tr>
<tr>
<td>2</td>
<td>N56°11'33&quot;W</td>
<td>5.01'</td>
</tr>
<tr>
<td>3</td>
<td>N78°41'33&quot;W</td>
<td>15.88'</td>
</tr>
<tr>
<td>4</td>
<td>N11°18'27&quot;E</td>
<td>25.00'</td>
</tr>
<tr>
<td>5</td>
<td>S78°41'33&quot;E</td>
<td>20.86'</td>
</tr>
<tr>
<td>6</td>
<td>S56°11'33&quot;E</td>
<td>34.99'</td>
</tr>
<tr>
<td>7</td>
<td>S33°48'27&quot;W</td>
<td>81.10'</td>
</tr>
</tbody>
</table>

P.O.C. POINT OF COMMENCEMENT  
T.P.O.B. TRUE POINT OF BEGINNING

STOCKTON EAST  
WATER DISTRICT  
4087-0.R.-512

VICINITY MAP

NO SCALE

101-170-34

SCALE 1" = 100'

CONTAINING  
7,827 SQ. FT.

PERMANENT EASEMENT  
SOUTH STOCKTON AQUEDUCT

CITY OF STOCKTON  
DEPARTMENT OF PUBLIC WORKS

APPROVED BY

REV. NO. REV. DATE REV.BY

DIGITIZED  
DWC. BY JGB SCALE
CK. BY 1"=100'

1 of 1
<table>
<thead>
<tr>
<th>Direction</th>
<th>Distance</th>
<th>Northing</th>
<th>Easting</th>
</tr>
</thead>
<tbody>
<tr>
<td>S 33°48'27&quot; W</td>
<td>205.99'</td>
<td>2171520.3139</td>
<td>6355652.5632</td>
</tr>
<tr>
<td>N 56°42'45&quot; W</td>
<td>25.00'</td>
<td>2171349.1520</td>
<td>6355537.9479</td>
</tr>
<tr>
<td>N 33°48'27&quot; E</td>
<td>262.32'</td>
<td>2171362.8736</td>
<td>6355517.0488</td>
</tr>
<tr>
<td>N 56°11'33&quot; W</td>
<td>5.01'</td>
<td>2171580.8343</td>
<td>6355663.0022</td>
</tr>
<tr>
<td>N 78°41'33&quot; W</td>
<td>15.88'</td>
<td>2171583.6239</td>
<td>6355658.8364</td>
</tr>
<tr>
<td>N 11°18'27&quot; E</td>
<td>25.00'</td>
<td>2171586.7383</td>
<td>6355643.2611</td>
</tr>
<tr>
<td>S 78°41'33&quot; E</td>
<td>20.86'</td>
<td>2171611.2530</td>
<td>6355648.1630</td>
</tr>
<tr>
<td>S 56°11'33&quot; E</td>
<td>34.99'</td>
<td>2171607.1636</td>
<td>6355666.6145</td>
</tr>
<tr>
<td>S 33°48'27&quot; W</td>
<td>81.10'</td>
<td>2171587.6970</td>
<td>6355697.6852</td>
</tr>
</tbody>
</table>

Perimeter: 676.14  Area: 7827 Sq. Ft., 0.180 Acres

Error of Closure:  N 42°08'13" E  0.000'
Error North:  0.000
Error East:  0.000
Precision:  1 in 80829541
Exhibit “D”

Notice of Completion/Acceptance