TO: Mayor and City Council

FROM: Gustavo A. Durán, Interim Director
Economic Development Department

SUBJECT: AUTHORIZE ACQUISITION OF A WATERLINE EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT FOR THE DELTA WATER SUPPLY PROJECT FROM WOODY'S ON THE RIVER, LLC, WILLIAM AND TRIANA BERRYHILL AND THOMAS C. AND LORETTA K. BERRYHILL

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the acquisition of a waterline easement, three temporary construction easements and rights for application and storage of excess water from Woody’s on the River, LLC; William and Triana Berryhill, Trustees of the William and Triana Berryhill Trust; and, Thomas C. and Loretta K. Berryhill, Trustees of the Thomas C. and Loretta K. Berryhill Trust, in the amount of $690,000, for the property on Assessor’s Parcel Nos. 069-080-06, 19, & 20 located adjacent to Eight Mile Road for the Delta Water Supply Project.

Summary

The proposed acquisition is for construction of a raw water pipeline to the new water treatment facility on Lower Sacramento Road. An agreement has now been negotiated with Woody’s on the River, LLC; William and Triana Berryhill, Trustees of the William and Triana Berryhill Trust; and, Thomas C. and Loretta K. Berryhill, Trustees of the Thomas C. and Loretta K. Berryhill Trust for the acquisition of a waterline easement and three temporary construction easements adjacent to Eight Mile Road on parcel APN #’s 069-080-06, 19, & 20 in the amount of $690,000 (map attached). Included in the proposed acquisition is the right to apply and store excess water from the pipeline project as well as payment for lost rents, profits, or income, relating to duck club operations and expenses related to vector control and/or mosquito abatement. The acquisition agreement is subject to, and contingent upon, written approval of the National Resources Conservation Service. In addition, up to $5,000 will be needed for miscellaneous closing costs for a total cost of up to $695,000.

DISCUSSION

Background

On November 8, 2005, through Resolution number 05-0493 the City Council approved the Delta Water Supply Project and associated environmental documents and directed City
AUTHORIZE ACQUISITION OF A WATERLINE EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT FOR THE DELTA WATER SUPPLY PROJECT FROM WOODY'S ON THE RIVER, LLC, WILLIAM AND TRIANA BERRYHILL AND THOMAS C. AND LORETTA K. BERRYHILL

staff to proceed with the design, financing, and permitting for the project. City Council further directed City staff to bring back for Council consideration certain items, including authorization to acquire any interests in land when it is appropriate to proceed with the project. On June 2, 2009, the City Council through Resolution number 09-0151 authorized the negotiation for the acquisition of real property for the intake and pump station for the project. On August 4, 2009, through Resolution number 09-0265, City Council then authorized the negotiation for the acquisition of real property for the raw and treated pipelines for the project. The proposed acquisition is for construction of a raw water pipeline to the new water treatment facility on Lower Sacramento Road.

Present Situation

The owners of the property, Woody’s on the River, LLC; William and Triana Berryhill, Trustees of the William and Triana Berryhill Trust; and, Thomas C. and Loretta K. Berryhill, Trustees of the Thomas C. and Loretta K. Berryhill Trust, have agreed to the City’s negotiated price of $690,000. Included in the price are a waterline easement and the three temporary construction easements adjacent to Eight Mile Road on parcel APN #’s 069-080-06, 19, & 20 in the amount of $9,400. The additional $680,600 represents the amount as payment for the right to apply and store excess water from the pipeline project, payment for lost rents, profits, or income, relating to duck club operations and expenses related to vector control and/or mosquito abatement. The acquisition agreement is subject to, and contingent upon, written approval of the National Resources Conservation Service. In addition, up to $5,000 will be needed for miscellaneous closing costs for a total cost of up to $695,000.

ENVIRONMENTAL CLEARANCE

Environmental Clearance for this project was approved by Resolution No. 05-0493, adopted on November 8, 2005, and said project is in compliance with the General Plan.

FINANCIAL SUMMARY

The cost of the acquisition is $690,000, additionally, up to $5,000 in estimated closing costs (up to $695,000) will be paid from Multi-funded Capital Improvement Project Account No. 399-9922-670, Delta Water Supply Project.
AUTHORIZE ACQUISITION OF A WATERLINE EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT FOR THE DELTA WATER SUPPLY PROJECT FROM WOODY'S ON THE RIVER, LLC, WILLIAM AND TRIANA BERRYHILL AND THOMAS C. AND LORETTA K. BERRYHILL

Respectfully submitted,

GUSTAVO A. DURÁN, INTERIM DIRECTOR ECONOMIC DEVELOPMENT DEPARTMENT

APPROVED BY

KEVIN O'ROURKE
INTERIM CITY MANAGER

GD:JPM:at

Attachments

::ODMA\GRPW\SEICOS.HRD.HRD_Library:101644.1
RESOLUTION AUTHORIZING THE ACQUISITION BY THE CITY OF STOCKTON OF A PERMANENT WATERLINE EASEMENT, THREE TEMPORARY CONSTRUCTION EASEMENTS, AND RIGHTS FOR APPLICATION AND STORAGE OF EXCESS WATER, HEREINAFTER MORE PARTICULARLY DESCRIBED, AUTHORIZING EXECUTION OF THE AGREEMENT AND RELATED DOCUMENTS FOR THE DELTA WATER SUPPLY PROJECT AND AUTHORIZING THE CITY MANAGER TO TAKE THE APPROPRIATE ACTIONS 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 Waterline Easement, three Temporary Construction Easements, and rights for application and storage of excess water from Woody's on the River, LLC; William and Triana Berryhill, Trustees of the William and Triana Berryhill Trust; and, Thomas C. and Loretta K. Berryhill, Trustees of the Thomas C. and Loretta K. Berryhill Trust, for the Delta Water Supply Project is necessary for a public purpose, to wit:

   WATER LINE, FACILITIES AND IMPROVEMENTS

2. That the City of Stockton hereby authorizes its acquisition of a Permanent Waterline Easement, three Temporary Construction Easements and rights for application and storage of excess water from Woody's on the River, LLC; William and Triana Berryhill, Trustees of the William and Triana Berryhill Trust; and, Thomas C. and Loretta K. Berryhill, Trustees of the Thomas C. and Loretta K. Berryhill Trust, via an Easement Deed for the Delta Water Project, more particularly described and substantially in the form of the "Agreement for Purchase and Sale of Real Property Interest" ("Agreement"), which is attached as Exhibit "A" and incorporated by this reference.

3. That the City Council hereby approves the total purchase price of said easements to be acquired in the sum of Six Hundred Ninety Thousand Dollars ($690,000) plus up to Five Thousand Dollars ($5,000) in closing costs.

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

5. That the specific terms and conditions of this acquisition are as expressly provided in the attached Agreements and incorporated by this reference.
6. Environmental Clearance for this project was approved by Resolution No. 05-0493, adopted on November 8, 2005, and said project is in compliance with the General Plan.

7. That the City Manager is hereby authorized 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 ____________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY INTERESTS

This AGREEMENT dated _____________, 2010, is made and entered into by and between THE CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California, hereinafter called "Buyer", and WOODYS ON THE RIVER, LLC, a California limited liability company, as to an undivided ninety-five percent (95%) ownership interest, WILLIAM AND TRIANA BERRYHILL, Trustees of the William and Triana Berryhill Trust dated January 27, 1997, as to an undivided 2.5% interest, and THOMAS C. AND LORETTA K. BERRYHILL, Trustees of the Thomas C. and Loretta K. Berryhill Trust dated February 14, 2001, as to an undivided 2.5% interest, hereinafter called "Seller".

WITNESSES THAT:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Seller agrees to grant to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions herein set forth, the following interests in Seller’s real property situated in the County of San Joaquin, State of California, described as San Joaquin County Assessor’s Parcel Numbers APN 069-080-06, 19 & 20

   a. Permanent waterline easement for construction, operation and maintenance of a water pipeline over 0.43 acres, described in Exhibit “A” & “B”, attached hereto and incorporated by this reference;


   c. Temporary construction easement for application and storage of excess water from Buyer’s pipeline project for a two year period on an approximately 530 acre area consisting of APNs 069-080-19 & 20 shown as Area “A” on Exhibit C, attached hereto and incorporated by this reference.

   d. Temporary construction easement for application and storage of excess water from Buyer’s pipeline project for a two year period on an approximately 70 acre area consisting of a portion of APN 069-080-06 shown as Area “C” on Exhibit C, attached hereto and incorporated by this reference, for application and storage of water;

Said permanent waterline easement over 0.43 acres and said temporary construction easement over 14.389 acres shall hereinafter be referred to as the Property. Said temporary construction easement over 530 acres
described above as Area A shall hereinafter be referred to as "Area A". Said temporary construction easement over 70 acres described above as Area C shall hereinafter be referred to as "Area C". Said temporary construction easements over both Area A and Area C collectively shall hereinafter be referred to as the Water Storage Property.

2. The total purchase price for the property rights being acquired by Buyer shall be the sum of SIX HUNDRED SEVENTY FIVE THOUSAND DOLLARS ($675,000.00) (the "Total Purchase Price"). If Buyer elects to use Area C for water storage as provided in clause 9, below, the Total Purchase Price shall be increased by FIFTEEN THOUSAND DOLLARS ($15,000.00) to SIX HUNDRED NINETY THOUSAND DOLLARS ($690,000.00). Seller understands and agrees that the Total Purchase Price is an all-inclusive purchase price and is based upon an appraisal of the fair market value of the Property in the amount of NINE THOUSAND FOUR HUNDRED DOLLARS ($9,400.00) and that the balance of the Total Purchase Price includes but is not limited to payment for allowing the Water Storage Property to be used by Buyer for application and storage of excess water from Buyer's pipeline project; lost or damaged crops and/or other improvements, including existing vegetation on the Property and the Water Storage Property; lost rents, profits, or income, including but not limited to duck club operations and memberships related to the Property or the Water Storage Property; except as to any contaminants other than salinity added due to Buyer's or it's contractor's operations restoration of the Property and the Water Storage Property; costs and expenses related to vector control and/or mosquito abatement as the result of Buyer's use of the Property or the Water Storage Property; and loss of rents, profit, income and/or crop damage to Seller's tenants. It is understood and agreed between Seller and Buyer that no attempt has been made to assign value to any lesser interest in the Property or the Water Storage Property, including any leasehold estate. The Total Purchase Price, therefore, is the total price for the acquisition of the permanent waterline and temporary construction easements on the Property and for the temporary construction easement on the Water Storage Property without distinction or separation for various interests that may be held. Seller shall be responsible for any apportionment or allocation of the Total Purchase Price if required for separately held interests that may exist. It is further understood and agreed between Seller and Buyer that payment of the Total Purchase Price by Buyer to Seller as set forth in this Agreement represents an all-inclusive settlement and is full and complete payment of compensation for the acquisition of the permanent waterline easement and the temporary construction easements described above and includes and satisfies any and all other payments, if any, that may be required by law to be paid to Seller arising out of the acquisition of said property rights and/or all persons occupying the Property and the Water Storage Property, and specifically includes, but is not limited to, claims for severance and other damages, loss of business goodwill, attorney's fees, interest, expenses of litigation,
expert’s fees, precondemnation damages, inverse condemnation, and relocation assistance and/or benefits and all costs and expenses whatever in connection therewith.

Buyer shall pay TWO HUNDRED THOUSAND DOLLARS ($200,000.00) of the Total Purchase Price within one week after approval of this Agreement by the City Council of the City of Stockton. Buyer shall pay the balance of the Total Purchase Price upon Close of Escrow as provided herein. If after Close of Escrow Buyer elects to use Area C for water storage as provided in clause 9, below, Buyer shall pay the remaining portion of the Total Purchase Price ($15,000.00) prior to the application and storage of water on Area C.

3. This agreement is subject to and contingent upon written approval of the National Resources Conservation Service (“NRCS”) to use the Property and to apply and store water on all or portions of the Water Storage Property including ponds and sloughs previously constructed by Seller as habitat on the NRCS easement at this location.

4. Except as otherwise expressly provided herein, all costs of title insurance and documentary transfer taxes, if any, shall be paid by Buyer.

5. Title to the Property shall be delivered free and clear of all liens, encumbrances, conditions, restrictions, easements, rights of possession, and leasehold interests excepting only such matters of title specifically waived in writing by the Buyer. Seller shall provide Buyer with a Release of Lien or Consent to Easement from each holder of a mortgage and/or deed of trust that is a lien against the Property. The balance of the unpaid principal and interest due on any note or notes secured by mortgages, deeds of trust, or other lien on the subject property, up to and including the amount to be paid Seller under the terms of this Agreement, shall be deducted from the purchase price and paid to the persons or entities entitled thereto, if they so require. In such event, trustee’s fees and recording costs will be paid by Buyer. Seller shall provide Buyer with a Consent to Easement from each Lessee having a leasehold interest in the Property, or from any other party claiming to have an interest in the Property. Those matters of title specifically waived by the Buyer are as follows:

(a) Current property taxes, including general and special taxes and assessments collected therewith, which shall be allocated pursuant to applicable sections of the Revenue and Taxation Code;

(b) The lien of supplemental taxes, if any, assessed pursuant to the provisions of chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California;

(c) Such other matters affecting title to, or use of, the Property which are approved in writing by Buyer.
6. Taxes, assessments, penalties, interest charges, delinquency charges, and municipal service charges of every kind levied upon or assessed against the Property, except as otherwise expressly set forth herein or arising from the subject property interests being acquired, shall be paid by Seller.

7. For the purpose of conveying the Property to Buyer, Seller shall execute, acknowledge, and deliver to Buyer an easement deed for the permanent waterline easement interest described in Clause 1.a., above, for recordation in accordance with this Agreement.

8. Seller understands and agrees that included in the purchase price stated in Paragraph No. 2, above, is compensation for a Temporary Construction Easement over a portion of Seller's property for construction of Buyer's Delta Water Supply Project. Seller hereby grants to Buyer, its agents, employees, and contractors, a Temporary Construction Easement on, over, and across the real property described in Exhibits "A" & "B", attached and incorporated herein. The Temporary Construction Easement area shall be used for the purpose of constructing Buyer's Delta Water Supply Project on the Property and all incidents necessary to accomplish said construction. The term of the Temporary Construction Easement shall be for two years commencing upon the Close of Escrow, as provided in this Agreement, unless sooner terminated by Buyer. Buyer shall indemnify and hold Seller harmless from any liability resulting from Buyer's use and occupancy of said Temporary Construction Easement. Seller agrees to notify its tenants, if any, of Buyer's right to enter and use said temporary construction easement area. Upon termination of Buyer's use of the Property under this Agreement, Buyer agrees to restore the Property to its condition prior to Buyer's use.

9. Seller understands and agrees that included in the purchase price stated in Paragraph No. 2, above, is compensation for a Temporary Construction Easement over Area A for the application and storage of water originating from Buyer's dewatering for its Delta Water Supply Project. Seller hereby grants to Buyer, its agents, employees, and contractors, a Temporary Construction Easement on, over, and across Area A and a Temporary Construction Easement on Area C, subject to Buyer's election to use Area C. Seller agrees to accept and temporarily store water originating from Buyer's dewatering for its Delta Water Supply Project. It is understood and agreed that Buyer shall convey water via surface pipe to and deposit said water in Seller's siphon located at the northeast corner of APN 069-080-19. Seller shall then distribute said water via direct discharge onto Area A at Seller's cost and expense. Seller agrees to accept delivery of up to 2,600,000 gallons per day.

It is understood and agreed by the parties that water shall first be applied to Area A and if Seller demonstrates to Buyer that Area A has become inundated and that all reasonable storage capacity has been achieved on
Area A, Buyer shall cease delivery of water to Seller's siphon and deposit its water on an adjacent property owned by others (APN 069-080-01, shown as Area B on Exhibit C), for which Buyer has separately secured water application and storage rights. If and when Area A is once again capable of storing additional water, Buyer shall be allowed to store additional water on Area A. If capacity of the adjacent property has been reached and/or for other reasons Buyer is unable to discharge its water on the adjacent property (APN 069-080-01, shown as Area B on Exhibit C), then Buyer may elect to apply and store water on Area C.

Seller agrees to take reasonable measures at Seller’s expense to control water stored on Seller’s property and to prevent Buyer’s water from entering into drainage canals and ditches owned and/or operated by Reclamation District 2029, and/or into surrounding public waterways. Such reasonable measures shall include but not be limited to plugging existing drainage ditches on Seller’s property and constructing dikes or berms as needed. Seller also agrees to cooperate with mosquito abatement requirements of state or local agencies having jurisdiction for such control. Buyer shall be responsible for securing all necessary regulatory permits and/or approvals for the discharge and storage of water on Seller’s property as herein provided and Buyer shall be deemed the discharger of said water. Buyer agrees to monitor the quality of water being discharged onto Seller’s property for arsenic bi-weekly for the first three weeks and agrees to provide Seller with such water quality information, and provide additional water quality monitoring if needed. Should said discharge water be found to contain contaminate in quantities greater than existing levels, Buyer agrees to discontinue water delivery until such time as the contaminate level can be maintained at existing levels.

Buyer agrees to remove all water application and storage equipment from the Water Storage Property upon completion of its dewatering operation. The term of the Temporary Construction Easement on Area A shall be for two years commencing upon the Close of Escrow, as provided in this Agreement, unless sooner terminated by Buyer. The term of the Temporary Construction Easement on Area C, shall terminate two years after the Close of Escrow, as provided in this Agreement, unless sooner terminated by Buyer. Seller agrees to notify its tenants, if any, of Buyer's right to enter and use said temporary construction easement areas.

10. License to Enter. Seller hereby grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property and the Water Storage Property prior to the Close of Escrow for the purpose of constructing the Delta Water Supply Project and accomplishing all incidents necessary thereto, including storage of water as herein provided. It is understood that this permission is not a waiver in any way of the right of compensation for the Property or the Water Storage Property that is the subject of this agreement or of any remedy authorized by law to secure payment thereof,
or a waiver of any right to seek just compensation for the property rights to be granted. The right of the Buyer to enter said property shall commence upon the effective date of this agreement and shall remain in effect until it is terminated by mutual agreement or until Close of Escrow as herein provided. Buyer shall indemnify and hold Seller harmless from liability resulting from Buyer's use and occupancy of said property under this Agreement. Seller agrees to notify its tenants, if any, of Buyer's right to enter the Property.

11. Seller hereby states that, to the best of Seller's knowledge, during the period of Seller's ownership of the Property, there have been no known underground storage tanks or related equipment nor known existence, disposal, storage, releases or threatened releases of hazardous materials, substances or hazardous wastes on, from or under the Property. Seller further represents that Seller has no knowledge of any underground storage tanks or related equipment nor knowledge of the existence, disposal, release, or threatened release of hazardous materials, substances or hazardous wastes, on, from, or under the Property which may have occurred prior to Seller taking title to the Property.

The term "hazardous materials" when used in this Agreement shall mean any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25, and any state and federal underground tank laws, rules and regulations. "Hazardous materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

The acquisition price of the Property being acquired in this transaction reflects the negotiated price for the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances or materials which require mitigation under federal or state law, Buyer may elect to recover its cleanup costs from those who caused or contributed to the contamination. If Buyer should discover any hydrocarbonous substances or any hazardous substances or materials (as determined under federal, state or local law then in effect), asbestos or asbestos-bearing materials or other environmental condition subject to legal requirements for investigation, corrective or remedial action on, in or under the Property, Buyer shall
immediately notify Seller in writing of the same, and if such discovery is made after the Close of Escrow, Buyer shall cause the condition to be corrected or remedied in accordance with applicable law.

The representations and promises made in this Clause No. 11 are intended to, and shall survive the execution, delivery and recordation of the deed referenced in Clause No. 7, above.

12. Buyer warrants to Seller that Buyer has not used the services of a real estate broker for which Seller will be charged a fee or commission. Seller shall be responsible at Seller's sole expense for real estate brokerage fees or commissions, if any.

13. Seller and Buyer shall, upon request by the other, execute, acknowledge, and deliver such documents or take such action as may be necessary or convenient to carry out the spirit and intent of this Agreement.

14. Time is of the essence in this Agreement.

15. In the event that Seller is unable to convey the Property to Buyer as herein provided prior to July 31, 2010, then Buyer, at its option, may terminate and cancel this Agreement and, in such event, Buyer shall in no manner be further obligated by the terms of this Agreement.

16. If suit should be brought for any sum due or the enforcement or declaration of any right or obligation hereunder, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

17. Any notice which either party may or is required to give shall be in writing and given by personal delivery or mailing same by certified mail, return receipt requested, postage prepaid, to the other party at the address shown below or at such other place as may be designated by the parties from time to time, and any notice so mailed shall be deemed received on the third day after mailing.

Buyer's address: City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Attn: City Manager

with copy to: Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206
Attn: Director
18. This Agreement is subject to final approval of the City Council of the City of Stockton.

19. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the deed referenced in Clause No. 6, above, (the "Close of Escrow"), as follows:

a. No Condemnation. To the best of the Seller's knowledge, there are no pending or threatened condemnations or similar proceedings affecting the Property, or any portion thereof, nor does the Seller have any knowledge that any such action is contemplated.

b. No Proceedings. To the best of the Seller's knowledge, there are no legal actions, suits, or other legal or administrative proceedings, including condemnation cases, pending or threatened against or affecting the Property. Seller has not received and is not aware of any notice from any public buyer or entity with respect to any current or future proceeding against or in relation to or affecting the Property or any part of the Property, or concerning any existing or potential, past, present or future hazardous materials at the Property.

c. No Violation of Law. Seller represents and warrants that, to the best of the Seller's knowledge, as of the date of this Agreement and as of the Close of Escrow, the Property is not in violation of any law, ordinance or regulation of any governmental authority including those relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions.

d. Clear Title. Seller represents and warrants that Seller is the owner of the Property and has marketable and insurable fee simple title to the Property free of restrictions, leases, liens and other encumbrances, except for the exceptions permitted pursuant to Clause No. 5, above. During the term of this Agreement, Seller shall not convey or accept any offer to convey the Property or any portion of the Property nor shall Seller encumber or permit encumbrance of the Property in any way nor grant any property, contract or occupancy right relating to the Property or any portion thereof without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

e. Contracts. Seller hereby covenants, represents, and warrants that at the Close of Escrow, there will be no contracts, licenses, commitments, or
undertakings concerning maintenance, operation, or repair of the Property or equipment on the Property, or the performance of services on the Property, including payment for such services performed prior to Close of Escrow, or the use of the Property or any part of it, by which Buyer would become obligated or liable to any person. If any person or entity makes a lawful claim for payment for services performed prior to Close of Escrow (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Close of Escrow, subject to Seller’s right to contest the validity of such claim. If any such claim for services performed prior to Close of Escrow (other than services provided to Buyer) is made after the Close of Escrow, Seller shall indemnify, defend, and hold Buyer harmless from any and all claims, demand, or liability. This duty of defense and indemnification shall survive the Close of Escrow.

f. No Default. Seller hereby covenants, represents, and warrants that, to the best of Seller’s knowledge and belief, Seller has received no notice of any default under any contract, transaction, agreement, encumbrance, or instrument pertaining to the Property, which has remained uncured as of the date of this Agreement. The obligation to notify Buyer of notices of default shall extend to the Close of Escrow.

g. Indemnification. Seller agrees to indemnify, defend, and hold Buyer harmless for breach of the warranties set forth above in subsections (a) through (f) of this Clause No. 19.

20. Page numbering references in this agreement do not apply to exhibits or other attachments. Diagrams, maps and/or drawings attached to this agreement, if any, are provided for illustrative purposes only. In the event of conflict with a written description, the written description shall control.

21. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, representatives, and assigns.

22. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral, for acquisition and/or use of the Property and the Water Storage Property, as described above. This Agreement may be amended only by written instrument signed by Seller and Buyer.

23. This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.
24. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: __________________________

WILLIAM AND TRIANA BERRYHILL, Trustees of the William and Triana Berryhill Trust dated January 27, 1997

By: ________________________________
    WILLIAM BERRYHILL, Trustee

By: ________________________________
    TRIANA BERRYHILL, Trustee

THOMAS C. AND LORETTA K. BERRYHILL, Trustees of the Thomas C. and Loretta K. Berryhill Trust dated February 14, 2001

By: ________________________________
    THOMAS C. BERRYHILL, Trustee

By: ________________________________
    LORETTA K. BERRYHILL, Trustee

Dated: __________________________

"SELLER"

WOODY'S ON THE RIVER, LLC, a California limited liability company

By: ________________________________

Printed Name: _________________________

Title: ________________________________

"BUYER"

CITY OF STOCKTON, a municipal corporation in the County of San Joaquin, State of California

By: ________________________________

KEVIN O’ROURKE
INTERIM CITY MANAGER

APPROVED AS TO FORM AND CONTENT:

By: ________________________________
    JOHN LUEBBERKE
    INTERIM CITY ATTORNEY
STOCKTON DEEP WATER CHANNEL

BRASS DISK STAMPED "EMPIRE 1997"
COSHERS, R.S. 35-05 MONUMENT NO.1
NAD 83 TO CCS83-III 1991.35 EPOCH
N 2203980.92
E 6274413.30

BASIS OF BEARINGS:
A LINE FROM COS MONUMENT STAMPED
"9N-3" TO COS MONUMENT STAMPED
"EMPIRE 1997" WHICH BEARS SOUTH
82'16'34" WEST, A GRID DISTANCE OF
36,157.15 FEET. GRID DISTANCES SHOWN
MUST BE MULTIPLIED BY 1.00005256 TO
OBTAIN GROUND DISTANCES.

LEGEND:
BOB BASIS OF BEARINGS
I.N. INSTRUMENT NUMBER
D.N. DOCUMENT NUMBER
O.R. OFFICIAL RECORDS
N. NUMBER
V. VOLUME
P. PAGE
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
R/W RIGHT OF WAY
P/C CENTERLINE
R.S. RECORD OF SURVEY, BOOK-PAGE
COSHERS CITY OF STOCKTON HORIZONTAL CONTROL SYSTEM
CCS83-III CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3
NAD83 NORTH AMERICAN DATUM OF 1983

PREPARED BY SIEGFRIED ENGINEERING, INC.

WATERLINE AND TEMPORARY CONSTRUCTION EASEMENT
APN: 069-080-06, 19 AND 20
CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

4495A
BERRYYHILL EASEMENT
DESCRIPTION
APN 069-080-06, 19 AND 20
WATERLINE AND TEMPORARY CONSTRUCTION EASEMENTS

Being a portion of that certain real property described in Document Number 2006-176668, San Joaquin County Records, lying in Section 36 Township 3 North, Range 4 East, and Section 31 Township 3 North, Range 5 East, Mount Diablo Base and Meridian, being a portion of Empire Tract, more particularly described as follows:

Waterline Easement

A 25' wide Waterline Easement, the centerline of which is described as follows: Commencing at a brass disk marking City of Stockton monument Number 277 stamped "9N-3" in monument box at the intersection of Eight Mile Road and the on-off ramps on the west side of Interstate 5, said brass disk having North American Datum of 1983 (NAD83) converted to the California Coordinate System of 1983, Zone 3 (CCS83-III) as referenced by the City of Stockton Horizontal Control System shown on the survey filed in volume 35 of surveys at page 5, epoch date 1991.35, with state plane coordinates of 2,208,340.50 feet North and 6,310,242.39 feet East; Thence South 82º16'34" West, a grid distance of 36,157.15 feet to a brass disk marking City of Stockton monument Number 1 stamped "EMPIRE 1997", station located 6.9 miles west of the intersection of Interstate 5 and Eight Mile Road, to the Venice Island Ferry, 1.6 miles south on the levee road to a steel pipe fence, said brass disk having North American Datum of 1983 (NAD83) converted to the California Coordinate System of 1983, Zone 3 (CCS83-III) as referenced by said City of Stockton Horizontal Control System shown on said survey filed in volume 35 of surveys at page 5, epoch date 1991.35, state plane coordinates of 2,203,980.92 feet North and 6,274,413.30 feet East; Thence North 61º25'44" East, a grid distance of 11,924.33 feet to a point on the northerly Right of Way line of Eight Mile Road as described in Vol. 435 of Official Records, at Page 1242, San Joaquin County Records, said point being the Point of Beginning of herein described easement; Thence North 2º19'02" East, 353.56 feet; Thence South 88º16'38" East, 396.02 feet to the East line of that property described in said Document Number 2006-176668, said point also being the Point of Terminus of the herein described centerline.

The sidelines of said easement shall be shortened or lengthened to terminate at said northerly Right of Way line and said East line.

Containing 18,740 Square Feet (0.430 Acres), more or less.

Temporary Construction Easement

Beginning at the Point of Beginning of the Waterline Easement described above; Thence along said northerly line of Eight Mile Road as described above, North 87º58'07" West, 70.00 feet; Thence along a line parallel with and 70.00 feet west of the
Berryhill Easement (Cont’d.)

The centerline of the Waterline Easement described above, North 2°19’02” East, 423.19 feet to a point on a line parallel with and 70.00 feet north of the centerline of the Waterline Easement as described above; Thence along said parallel line South 88°16’38” East, 464.15 feet to the East line of that property described in said Document Number 2006-176668; Thence along said East line South 0°47’00” West, 425.79 feet to a point on said northerly line of Eight Mile Road; Thence along said northerly line North 87°58’07” West, 405.53 feet to said Point of Beginning.

Containing 4.578 Acres (4.148 Acres excluding Waterline Easement area), more or less.

Together with a 60 foot wide Temporary Construction Easement, the southerly line of which is coincident with the northerly line of Eight Mile Road as described in Volume 435 of Official Records at Page 1242, San Joaquin County Records, the centerline of which is described as follows:

Commencing at the Point of Beginning of the Waterline Easement described above; Thence along said northerly line of Eight Mile Road, North 87°58’07” West, 70.00 feet; Thence along a line parallel with and 70.00 feet west of the centerline of the Waterline Easement described above, North 2°19’02” East, 30.00 feet to the Point of Beginning of herein described easement centerline; Thence along a line parallel with and 30.00 feet north of said northerly line of Eight Mile Road, North 87°58’07” West, 7435.12 feet to the West line of that property described in Document Number 2006-176668, San Joaquin County Records and the Point of Terminus of the herein described centerline.

The sidelines of said easement shall be shortened or lengthened to terminate at said West property line and said parallel line 70.00 feet west of the centerline of the Waterline Easement described above.

Containing 10.241 Acres, more or less.

Basis of Bearings: A line from City of Stockton monument Number 277 stamped “9N-3” to City of Stockton monument Number 1 stamped “EMPIRE 1997” which bears South 82°16’34” West. Bearings and distances in this description are based on the North American Datum of 1983 (NAD83) converted to the California Coordinate System of 1983, Zone 3 (CCS93-III) as referenced by the City of Stockton Horizontal Control System, record of survey filed in book 35 of surveys at page 5. Grid distances must be multiplied by 1.00005256 to obtain ground distances.

END OF DESCRIPTION

wmk
06301
12/17/08

William M. Koch, P.L.S. #8092
License Expires: 03-31-10

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Siegfried Engineering, Inc.

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