CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.08
June 29, 2010

TO: Mayor and City Council

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

SUBJECT: AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the acquisition of a permanent street and highway easement along South El Dorado Street (APN # 193-020-30) owned by Steven M. Jones, at a cost of $63,100 for the Sperry Road Extension Project.

Summary

The Sperry Road Extension Project consists of the extension of Sperry Road from Performance Drive to French Camp Road. On June 26, 2007, Council authorized Resolution No. 07-0262 approving the environmental clearance for the project. The property proposed for acquisition is owned by Steven M. Jones and is located north of French Camp Road and the El Dorado Street intersection (map attached).

DISCUSSION

Background

Sperry Road is a two-lane roadway between Airport Way and McKinley Avenue. The lack of a Sperry Road connection to Interstate 5 increases the pressure on existing facilities such as Charter Way, the Crosstown Freeway, McKinley Avenue, and French Camp Road. The City is experiencing substantial development of commercial and industrial lands in south Stockton, adjacent to the Stockton Metropolitan Airport, which creates additional east-west traffic demands. In response to the transportation needs in south Stockton, the City’s General Plan identified a need to provide a continuous route between Interstate 5 and State Route 99 by extending Sperry Road to French Camp Road, and reconstructing the Interstate 5/French Camp Road interchange. A specific plan for Arch-Airport/Sperry Road was developed. The limit of the Specific Plan extends along Arch Road, between Austin Road and the future French Camp/I-5 interchange, and includes the extension of Sperry Road. The specific plan was adopted by the City in 2002 by Resolution No. 02-0516, as well as by San Joaquin County.

The Sperry Road Extension Project will extend and realign approximately 6,500 feet of Sperry Road, from Performance Drive to French Camp Road, just east of Interstate 5. The extension will require the construction of an elevated roadway including five bridges.
AUTHORIZE ACQUISITION FOR THE SPERRY ROAD EXTENSION PROJECT

(Please indicate on cover sheet)

crossing railroads, roadways, and French Camp Slough. The footprint of the ultimate Sperry Road Extension will be wide enough to accommodate eight lanes, although presently Sperry Road will be constructed with four lanes.

Present Situation

The owner of the property located on El Dorado Street (APN # 193-020-30), Steven M. Jones has agreed to the City's offered price in the amount of $63,100. In addition, up to $5,000 will be needed for miscellaneous closing costs for a total cost of up to $68,100.

ENVIRONMENTAL CLEARANCE

The Final Environmental Impact Report / Environmental Assessment (FEIR/EA 8-03 SCH 2003112018) and Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the Sperry Road Extension, Project No. 98-01, was approved by City Council on June 26, 2007, by way of Resolution 07-0262.

FINANCIAL SUMMARY

The cost of the acquisition is $63,100 plus up to $5,000 in estimated closing costs for a total cost up to $68,100 and will be paid from Project Account No. 399-9837-640, Sperry Road Extension Project.

Respectfully submitted,

GUSTAVO A. DURÁN, INTERIM DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

GD:AH:at
Attachment

APPROVED BY

KEVIN O'ROURKE
INTERIM CITY MANAGER
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE ACQUISITION BY THE CITY OF STOCKTON OF A STREET AND HIGHWAY EASEMENT, VIA EASEMENT DEEDS, HEREINAFTER MORE PARTICULARLY DESCRIBED, AUTHORIZING EXECUTION OF THE AGREEMENT AND RELATED DOCUMENTS FOR THE SPERRY ROAD EXTENSION PROJECT AND AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS AS 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 the easement interests from Steven M. Jones, via Easement Deeds, for the Sperry Road Extension Project is necessary for a public purpose, to wit:

Street and Highway Improvements

2. That the City of Stockton hereby authorizes its acquisition of the easement interests from Steven M. Jones, via Easement Deeds, for the Sperry Road Extension Project and described in 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 easement interests to be acquired in the sum of Sixty-three Thousand One hundred Dollars ($63,100) 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 Agreements.

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

6. With regard to environmental clearance for the Sperry Road Extension Project, the Final Environmental Impact Report / Environmental Assessment (FEIR/EA 8-03 SCH 200312018) and Statement of Overriding Consideration and Mitigation Monitoring and Reporting Program for the Sperry Road Extension, Project No. 99-01, was approved by City Council on June 26, 2007, by way of Resolution 07-0262
7. That the City Manager is hereby authorized and directed to execute the Agreements 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 INTEREST

This AGREEMENT dated 5-10-10 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 Steven M. Jones, 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, a street and highway easement in that certain real property, herein called "the Property", situated in the County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated by this reference, upon the terms and conditions herein set forth.

2. The total purchase price for the easement interest shall be the sum of SIXTY THREE THOUSAND ONE HUNDRED DOLLARS ($63,100.00). The purchase price is based upon an appraisal of the fair market value of the Property. The appraisal made no attempt to assign value to any lesser interest in the Property, including any leasehold estate. The purchase price, therefore, is the total price for the Property without distinction or separation for various interests that may be held in the Property. Seller shall be responsible for any apportionment or allocation of the purchase price if required for separately held interests that may exist.

   Included in the purchase price as stated herein is compensation for existing improvements on the Property, including but not limited to the following: Fencing

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

4. Title to the easement interest in 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,
prepayment penalties, if any, together with 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.

5. 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 easement interest being acquired, shall be paid by Seller.

6. For the purpose of conveying the herein described easement to Buyer, Seller shall execute, acknowledge, and deliver to Buyer an easement deed for recordation, in accordance with this Agreement.

7. Seller grants to Buyer, its employees, agents, and contractors, permission to enter upon the Property prior to the close of escrow for the purpose of constructing the Sperry Road Extension Project and accomplishing all incidents necessary thereto. It is understood that this permission is not a waiver in any way of the right of compensation for the easement interest 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 the Sperry Road Extension Project improvements have been completed in the vicinity of Seller's property. Buyer shall indemnify and hold Seller harmless from any liability resulting from the use and occupancy of said property under this provision. Seller agrees to notify its tenants, if any, of Buyer's right to enter the Property.

8. 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 value 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 paragraph are intended to, and shall survive the execution, delivery and recordation of the deed referenced in paragraph number 6.

9. Buyer warrants to Seller that Buyer has not used the services of a real estate broker. Seller shall be responsible at Seller’s sole expense for real estate brokerage fees or commissions, if any.
10. 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.

11. Time is of the essence in this Agreement.

12. In the event that Seller is unable to convey to Buyer the Property as herein provided prior to June 30, 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.

13. 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.

14. 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

Seller's address:    Steven M Jones
                    2222 Outrigger Rd
                    El Dorado Hills, CA 95762

15. This Agreement is subject to final approval of the City Council of the City of Stockton.

16. Seller represents, warrants and covenants to Buyer as of the date of this Agreement and as of the date of the recording of the Easement Deed transferring the Property to the Buyer (the "Closing"), as follows:

   a. No Condemnation. To the best of the Sellers' knowledge, there are no pending or threatened condemnation 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 basis for any future proceeding against 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 Closing, 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 paragraph 4, 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 Closing, 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 Closing, 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 Closing (other than services provided to Buyer), Seller will be obligated to pay or cause to be paid such claim prior to Closing, subject to Seller's right to contest the validity of such claim. If any such claim for services performed prior to Closing (other than services provided to Buyer) is made after the Closing, 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 Closing.
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 Closing.

17. 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.

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

19. This agreement represents the entire and integrated agreement between Seller and Buyer and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Seller and Buyer.
20. The undersigned represent and warrant they are duly authorized to execute this Agreement and to bind the parties.

Dated: 5-10-10

SELLER

STEVEN M. JONES

BUYER

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

KEVIN O'ROURKE.
INTERIM CITY MANAGER

APPROVED AS TO FORM AND CONTENT

By:

ASSISTANT CITY ATTORNEY
EXHIBIT "A"

December 10, 2009

DESCRIPTION

APN 193-020-30 – Sperry Road Extension - STEVEN M. JONES

That certain real property situate in the County of San Joaquin, State of California, being a portion of Sections 12 and 13 of the C.M. Weber Grant, "El Rancho del Campo de los Franceses", also being a portion of that certain 1.730 acre parcel labeled Parcel A as shown in Book 6 of Parcel Maps, at Page 92, filed on July 27, 1978, San Joaquin County Records, also being a portion of that certain property as described in Grant Deed recorded on June 4, 1998 as Instrument Number 98064759 San Joaquin County Records, more particularly described as follows:

COMMENCING at the City of Stockton Control Point No. 316, a brass disk in a monument box stamped “10S-12” at the intersection of Wolfe Road and French Camp Road, as referenced in Book 35 of Surveys, at Page 5, filed for record on December 3, 2001, San Joaquin County Records, which bears South 09°19'46" West 13943.95 feet from City of Stockton Control Point No. 340, being a 5/8" aluminum rod driven to refusal with 2 1/2" diameter aluminum cap stamped "CORP I.S. 4334," set in an aluminum monument box with screw locking cover in the COS corporation yard, 1465 S. Lincoln Street; said Point No. 340 also shown on said Record of Survey filed for record in Book 35 of Surveys, at Page 5; thence North 87°10'47" East 8013.56 feet to a 6 inch by 6 inch concrete CALTRANS monument shown on the east right-of-way line of El Dorado Street on the Parcel Map filed in Book 3 of Parcel Maps, at Page 81, on August 13, 1976, San Joaquin County Records; said concrete monument is located at the northwesterly terminus of the course labeled “N51°05’09”W 32.06’”; thence South 00°55'48" West 427.99 feet to a 6 inch by 6 inch concrete CALTRANS monument shown on the east right-of-way line of El Dorado Street on the Parcel Map filed in Book 3 of Parcel Maps, at Page 81; said concrete monument is located at the southerly terminus of the course labeled “N00°15’30”E 203.17’”; thence South 37°39'54" West 71.06 feet to point on the northeasterly line of herein described Sperry Road Extension proposed right of way, said point also being the TRUE POINT OF BEGINNING of herein described right of way widening;

thence along the said northeasterly line of the herein described proposed right of way South 83°54'39" East, 105.79 feet to the southerly line of said Parcel A; thence leaving the northeasterly line of the herein described proposed right of way, along the said southerly line of Parcel A, South 71°34'02" West, 361.61 feet, to the southwest corner of said Parcel A; thence leaving the said southerly line of Parcel A, along the westerly lines of said Parcel A and a meander line of the right (east) bank of French Camp Slough, in a generally northeasterly direction the following courses:

(1) North 9°21'26" East 45.80 feet;
(2) thence North 39°41'26" East 78.00 feet;
(3) thence North 67°16'26" East 81.73 feet, to a point on the northeasterly line of the herein described proposed right of way, said point bears North 83°54'39" West from the TRUE POINT OF BEGINNING;

thence along the northeasterly line of the herein described proposed right of way South 83°54'39" East 105.82 feet to the TRUE POINT OF BEGINNING of the herein described proposed right of way widening.

The parcel described herein 0.46 Acres, more or less.

SUBJECT TO any public trust easement lying within the banks of French Camp Slough and encumbered by the State of California.
SUBJECT TO any special assessments, restrictions, reservations, easements, and other encumbrances.

Bearings and distances are based on the California Coordinate System, Zone 3, North American Datum 1983. Multiply distances shown by 1.00006343 to obtain ground distances. All distances are provided in United States Survey Feet.

End of Description.

This document was prepared by me, or under my direct supervision.

Landon Blake – PLS 8489
TIE TO THE CITY OF STOCKTON
CONTROL POINT #316
N87°10'47"E
8013.56'
NORTH 2150524.41
EAST 6337879.55
6"x6" CONCRETE
CALTRANS MONUMENT
AS SHOWN ON PM 3-81.

NORTH 2150096.47
EAST 6337872.60
6"x6" CONCRETE
CALTRANS MONUMENT
AS SHOWN ON PM 3-81.

APN 193-020-30
SPERRY ROAD EXTENSION
CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS
EXHIBIT "A"

BEING A PORTION OF SECTIONS 12 AND 13 C.M. WEBER GRANT, EL RANCHO DEL CAMPO DE LOS FRANCÉS, SAN JOAQUIN COUNTY, STATE OF CALIFORNIA

APN 193-020-41
ROBERT BORDENAVE
IN 920870995

BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3, NORTH AMERICAN DATUM OF 1983. MULTIPLY GRID DISTANCES BY 1.00006343 TO OBTAIN GROUND DISTANCES.

ABBREVIATIONS:
APN = TAX ASSESSOR PARCEL NUMBER
L = ARC LENGTH
R = RADIUS
A = ARC LENGTH
CHD = CHORD DIRECTION
CHL = CHORD LENGTH
COS = CITY OF STOCKTON
IN = INSTRUMENT NUMBER
DN = DOCUMENT NUMBER
(R) = RADIAL
NO. = NUMBER

SPERRY ROAD EXTENSION
PARCEL A
PARCEL MAP 6-92

APN 193-020-30
STEVEN JONES
IN 98064759

NO. REV DATE BY APRVD

APPROVED BY
CITY ENGINEER

DRAWING NO.

4565A