



Meeting Date: 4/7/2009

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Cynthia Daniels, AICP *cd* Agenda Item No. I-2

Reviewed By: City Manager *[Signature]* City Attorney *ant* Finance *[Signature]* Other NA

DATE: March 25, 2009

TO: City Council

FROM: Cynthia Daniels, Project Manager *Cynthia Daniels*
Development Services Department

SUBJECT: Agreement with Sakioka Farms and AMS Craig, LLC for Right of Entry for Rice Avenue/Santa Clara Avenue Interchange Improvements at Highway 101

RECOMMENDATION

That City Council approve and authorize the Mayor to execute the agreement (No. A-7140) with Sakioka Farms and AMS Craig, LLC to permit entry to their property during construction of the Rice Avenue/Santa Clara Avenue interchange improvements on U.S. Highway 101.

DISCUSSION

The City Council adopted Resolution No. 12,950 on September 27, 2005 to begin condemnation of the Sakioka Farms and AMS Craig property needed for the Rice Avenue/Santa Clara Avenue interchange improvements on Highway 101. The condemnation is still pending with the Ventura County Superior Court. The property identified in the right of entry agreement was not identified in the City Council resolution. The right of entry provides an easement for 2 anchor guys for the relocated 66 kilovolt overhead electrical poles (owned by Edison) on the east side of Rice Avenue, south of Gonzales Road. The property owners have agreed to allow a right of entry until the condemnation case is settled. There is no charge for the right of entry. The right of entry permits the City and its contractor to enter the property to construct the interchange before the City owns the property. The City needs the right of entry to obtain a right of way certification from the California Department of Transportation (Caltrans), which is a pre-condition for receiving the Caltrans encroachment permit.

FINANCIAL IMPACT

None.

CD

Attachment #1 - Agreement No. A-7011

APN: 216-0-030-14/15
PROJECT: Rice Avenue Interchange

RIGHT OF ENTRY AGREEMENT

This Agreement is made this 7th day of April, 2009, by and between the CITY OF OXNARD, A MUNICIPAL CORPORATION, hereinafter referred to as "City," and SAKIOKA FARMS, A CALIFORNIA GENERAL PARTNERSHIP and AMS CRAIG LLC, A DELAWARE LIMITED LIABILITY COMPANY, hereinafter referred to COLLECTIVELY as "Owner."

R E C I T A L S

- A. It is hereby agreed by and between the parties that the City requires immediate possession of a portion of the Owner's real property to construct a public improvement project involving the widening of the intersection of Interstate 101 and Rice Avenue.
- B. The required portion of Owner's property is designated as Ventura County Assessor's Parcel Number 216-0-030-14/15 and legally described in attached Exhibit "A," and hereinafter referred to as "Parcel 73-A."
- C. Parcel 73-A is required for the purpose of installing guy wire supports to adjacent power poles owned by the Southern California Edison Company. The purpose of this Agreement is to allow the City to proceed with the construction of its improvement project without delay.
- D. The City has made a deposit of just compensation into the court and has obtained an Order of Prejudgment Possession from the Ventura County Superior Court (No. CIV 237760 dated December 23, 2005) over Owner's additional properties. Such additional properties are hereinafter referred to as "Parcels".

A G R E E M E N T

It is agreed by the parties that any delay in the start of construction of this project is contrary to the public interest. It is the intent of this agreement to offer fair-market compensation to the Owner for permission to enter the Parcel and construct the project.

In consideration of the sum to be paid to the Owner and any other consideration hereinafter set forth, the City and Owner agree as follows:

- 1. Owner hereby irrevocably grants to City, its contractors, agents, and all others deemed necessary by City, the irrevocable right to possession and use of Parcel 73-A

including the right to remove and dispose of improvements within the right of way. City shall have the right to take possession of Parcel 73-A immediately for the stated purpose.

2. There will be no escrow in this transaction. Instead, City agrees to amend its action against Owner to include the acquisition of an Easement over Parcel 73-A for guy-wire support purposes. The precise verbiage of such easement will be provided by the Southern California Edison Company at a future date. In no event shall the verbiage of such easement to be provided exceed or expand the scope of the Easement over Parcel 73-A as described herein.

3. This Agreement shall remain open until either: a settlement is reached; this agreement is terminated; or a final order of condemnation under Section 1268.030 of the California Code of Civil Procedure is entered by the court.

4. Owner agrees to pay when due all taxes, including prorated taxes for the current year, and special assessments due on the date City takes possession of Parcel 73-A.

5. It is understood and agreed that this agreement shall continue in effect until either a settlement is reached or a final order of condemnation under Section 1268.030 of the California Code of Civil Procedure is entered by the court.

6. Section 1245.235 of the Code of Civil Procedure requires the City to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the City Council 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.)

7. By granting this irrevocable right to possession and use of the parcels to City, Owner agrees to the following:

(1) Owner shall not object to the filing of an amended complaint to acquire the property described in Exhibit A; and

(2) In any eminent domain action filed by the City to acquire the property described in Exhibit A, Owner shall not challenge City's right to take such property, and the only issue shall be the amount of just compensation for the property.

8. Owner expressly waives all claims and defenses to the City's right to take Parcel 73-A in any subsequent eminent domain proceeding. Owner reserves its right to claim greater compensation in any subsequent eminent domain proceeding.

9. Because proceedings in eminent domain have begun, all parties agree that this Agreement has no impact on the date of valuation for determining the amount of just compensation for the Parcels or Parcel 73-A.

10. At any time after the commencement of the proceeding in eminent domain, City reserves the right to abandon the proceeding in whole or in part.

11. This agreement shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.

12. City may file a memorandum of this agreement with the court.

Signatures on the following page

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

OWNER:

Sakioka Farms, a California General Partnership

By: Phyllis T. Sakioka

Ray J. Sakioka

Date February 19, 2009

AMS Craig LLC, a Delaware limited liability company

By: [Signature]

Date 3/19/09

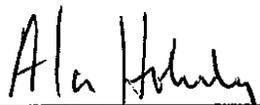
CITY: The City of Oxnard, a Municipal Corporation

Dr. Thomas E. Holden, Mayor

ATTEST:

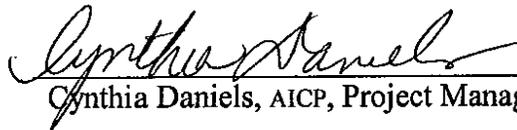
Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

APPROVED AS TO CONTENT:



Cynthia Daniels, AICP, Project Manager

EXHIBIT "73-A"

LEGAL DESCRIPTION

Those strips of land, 0.914 meters wide, in the City of Oxnard, County of Ventura, State of California, being portions of Parcels "C" and "D" of the Resubdivision of Subdivisions 45, 46 and a part of 49, Rancho el Rio de Santa Clara o'la Colonia, as per the map filed in Book 2, Page 43 of Records of Survey in the office of the County Recorder of said County, the centerlines of said strips of land described as follows:

Parcel 1-

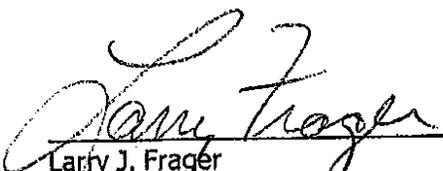
Beginning at a point in the line described in the ninth course, Parcel 1 of Parcel 7 (Permanent Utility Easement 60) of the Order for Prejudgment Possession recorded December 30, 2005, as Document No. 20051230-0320112 of Official Records of Ventura County, said point bears North 4°01'46" East 1.284 meters from the southerly terminus of said course; thence North 87°21'38" West 3.736 meters to the intersection with the line described in the fourteenth course of Parcel 2 (Permanent Partial Take 45) of said Order of Prejudgment Possession.

The sidelines of said strip of land to be lengthened or shortened to terminate easterly in the westerly line of said Parcel 7, and westerly in the easterly line of said Parcel 2.

Parcel 2-

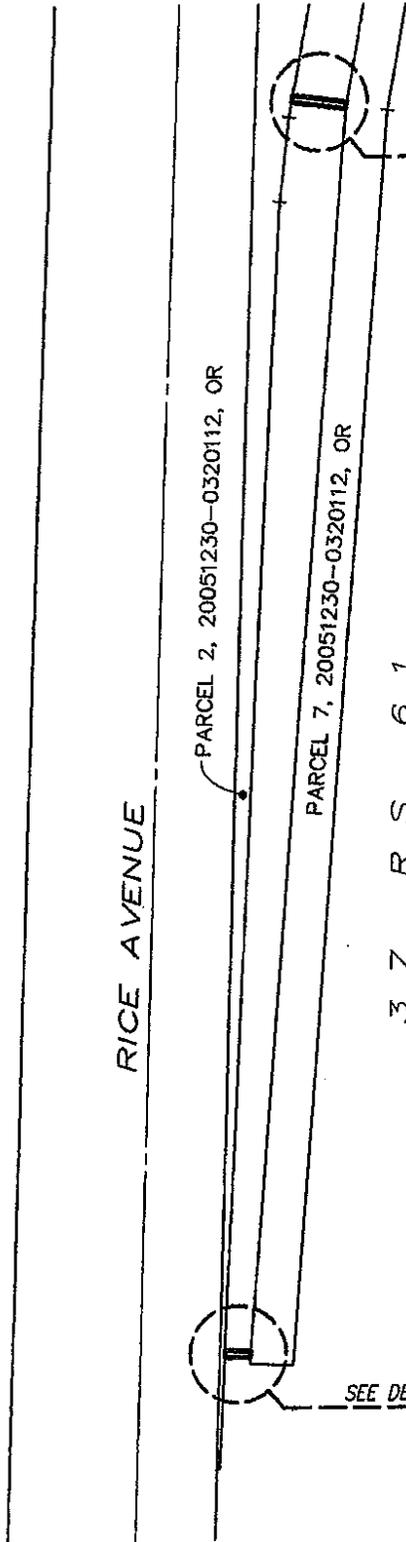
Beginning at the northerly terminus of the line described in the ninth course, Parcel 1 of Parcel 7 of the hereinabove described Order of Prejudgment Possession; thence North 83°16'11" West 7.828 meters to the intersection with the line described in the twelfth course of Parcel 2 of said Order of Prejudgment Possession.

The sidelines of said strip of land to be lengthened or shortened to terminate easterly in the westerly line of said Parcel 7, and westerly in the easterly line of said Parcel 2.


Larry J. Frager
L.S. 7998 (Expires 12/31/10)

12/16/08
Date





PARCEL 2, 20051230-0320112, OR
 PARCEL 7, 20051230-0320112, OR

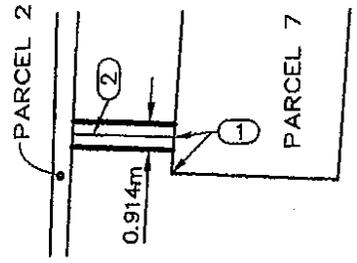
3 7 R S 6 1

SEE DETAIL "B"

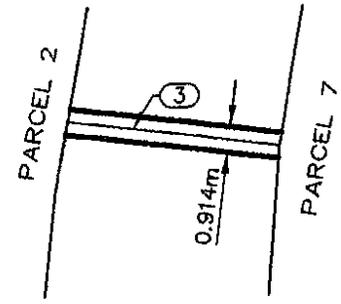
SEE DETAIL "A"

○ LINE TABLE:

1	N4°01'46"E	1.284m
2	N87°21'38"W	3.736m
3	N83°16'11"W	7.828m



DETAIL "A"
1:250



DETAIL "B"
1:250



METRIC SCALE:
1:1000

PREPARED BY:
 BENNER AND CARPENTER, INC.
 506 EAST MAIN STREET
 SANTA PAULA, CA 93060
 (805) 525-3396

EXHIBIT "73-B"
SKETCH TO ACCOMPANY
LEGAL DESCRIPTION