March 3, 2009

TO: Mayor and City Council

FROM: Municipal Utilities Department

SUBJECT: ARCH ROAD AND LOGISTICS DRIVE WATER TRANSMISSION MAINS REIMBURSEMENT AGREEMENT (PROJECT NUMBER M07077)

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to execute a reimbursement agreement in the amount of $1,419,579.14 with the Arch Road Limited Partnership and Opus West Construction Corporation for the construction of the Arch Road and Logistics Drive water transmission mains.

SUMMARY

The Arch Road Limited Partnership and Opus West Construction Corporation has constructed water transmission mains on Arch Road, Logistics Drive, and within a public utility easement. In accordance with the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code, the Developer is entitled to reimbursement for the cost of design and construction of the Improvements in excess of those required to serve the Developer's project. This action will approve a reimbursement agreement, and reimburse the Developer for Improvements installed in excess of those required to serve the Developer's project.

DISCUSSION

Background

The City Water Master Plan was adopted by the City Council on August 26, 2008. This Water Master Plan identifies, in part, large water transmission pipelines necessary to support the growth of commercial and industrial development in southeast Stockton.

Ongoing industrial development, namely from the Opus West Logistic Center in southeast Stockton, has driven the necessity to expand the City's South Water System, as recommended by the Water Master Plan.

The project mainly consisted of the construction of 24-inch and 16-inch water transmission mains on Mariposa Road, Arch Road, and Logistics Drive (collectively referred to as "Improvements"). The construction of the Improvements provides the necessary drinking water and fire suppression supplies for these and future industrial and commercial development projects in southeast Stockton.
ARCH ROAD AND LOGISTICS DRIVE WATER TRANSMISSION MAINS
REIMBURSEMENT AGREEMENT (PROJECT NUMBER M07077)
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To expedite the expansion of the City’s South Water System, the Improvements were included in a design-bid-build arrangement through a Master Reimbursement Agreement with the Arch Road Limited Partnership and Opus West Construction Corporation.

The Master Reimbursement Agreement was executed on September 9, 2008 (City Council Resolution Number 08-0365 and 08-0366) with the Arch Road Limited Partnership and Opus West Construction Corporation and provided design services for the Improvements. The Arch Road Limited Partnership and Opus West Construction Corporation retained Kier and Wright Engineers and Land Surveyors, Inc. to perform the design work. This firm was involved in the construction of the major infrastructure for the 474-acre Opus West Logistic Center, located adjacent to the alignment of the Improvements.

The Master Reimbursement Agreement requires City Council authorization prior to Arch Road Limited Partnership and Opus West Construction (collectively referred to as “Developer”) proceeding with the construction of the Improvements.

Current Situation

The Developer has proceeded with the installation of a portion of the Improvements prior to the issuance of the Notice to Proceed, as required by Section 2, et seq. of the Terms and Conditions contained in the Master Reimbursement Agreement. This action is contrary to the conditions in the Master Reimbursement Agreement, and thus, a new agreement is necessary in order to establish the necessary financial mechanism to reimburse the Developer for the design and construction of the completed Improvements.

This Master Reimbursement Agreement is established in accordance with the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code, thus the Developer is entitled to reimbursement for the cost of design and construction of the Improvements in excess of those required to serve the Developer’s project, Opus Logistic Center. The installed 24-inch water transmission main is intended to convey potable water from the South Stockton Aqueduct to southeast Stockton and not intended for local distribution purposes, thus the water main is considered in excess of what is necessary to serve the Opus Logistics Center. In addition, a small portion of the Improvements included the upsizing of a 12-inch water main to 16-inch water main. Pursuant to Resolution 02-0331, dated May 28, 2002, reimbursement for the increment cost of the upsizing is allowed, provided the larger water main is not required for the Developer’s project.
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It is anticipated that the Developer will request additional reimbursement to perform the balance of the work of the Improvements pursuant to the reimbursement procedures set forth in the Master Reimbursement Agreement. Specifically, the balance of the Improvements to be constructed is located on Mariposa Road from North Little Johns Creek to Carpenter Road.

Developer has provided sufficient documentation substantiating the cost of the Improvements to the satisfaction of the Director of Municipal Utilities. The reimbursement can be summarized as follows:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Cost</td>
<td>$1,259,527.22</td>
</tr>
<tr>
<td>Opus West Construction Corporation Direct Costs</td>
<td>160,051.92</td>
</tr>
<tr>
<td>Total Not-To-Exceed Reimbursement</td>
<td>$1,419,579.14</td>
</tr>
</tbody>
</table>

The proposed action will authorize the execution of the reimbursement agreement with the Developer and payment to the Developer for the Completed Improvements.

ENVIRONMENTAL CLEARANCE

In regards to environmental clearance, City Council certified the Final Initial Study/Mitigated Negative Declaration (MUD IS1-08), and adopted the findings and mitigation monitoring program for the Arch and Mariposa Roads Water Transmission Main Project on September 9, 2008 (City Council Resolution Number 08-0364).

On September 9, 2008, the City Council determined that the Arch and Mariposa Roads Water Transmission Mains Project conforms to the City of Stockton General Plan (Policy Document and Land Use/Circulation Diagram), adopted December 11, 2007 (City Council Resolution Number 08-0364).
March 3, 2009

ARCH ROAD AND LOGISTICS DRIVE WATER TRANSMISSION MAINS
REIMBURSEMENT AGREEMENT (PROJECT NUMBER M07077)

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FINANCIAL SUMMARY

The Total Estimated Reimbursement is $1,419,579.14. Sufficient funds are available in account 423-7623-670 (Water Transmission Mains Capital Improvement Program) for this reimbursement. The project is being funded from proceeds from the 2005 Water Revenue Bonds. This capital improvement project does not impact the General Fund.

PREPARED BY: Antonio S. Tovar

Respectfully submitted,

MARK J. MADISON
DIRECTOR OF MUNICIPAL UTILITIES

MJM:AST:mll

Attachments

Approved By:

J. GORDON PALMER, JR.
CITY MANAGER
Exhibit A
Arch Road and Logistics Drive Water Transmission Mains

NORTH LITTLE JOHNS CREEK

24" W

16" W

16" W

24" W

ARCH RD

LOGISTICS DR

WEBER SLOUGH

NEWCASTLE RD

MARIPOSA RD

AUSTIN RD

WATERWAY CROSSING

24" Full Reimbursement
16" Partial Reimbursement for upsizing from a 12" to 16"
Resolution No. _________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A REIMBURSEMENT AGREEMENT IN THE AMOUNT OF $1,419,579.14 WITH THE ARCH ROAD LIMITED PARTNERSHIP AND OPUS WEST CONSTRUCTION CORPORATION FOR THE CONSTRUCTION OF THE ARCH ROAD AND LOGISTICS DRIVE WATER TRANSMISSION MAINS

The adopted Water Master Plan identifies, in part, large water transmission pipelines necessary to support the growth of commercial and industrial development in southeast Stockton; and

Ongoing industrial development, namely from the 474-acre Opus West Logistic Center in southeast Stockton, has driven the necessity to expand the City’s South Water System as recommended by the Water Master Plan; and

In accordance with the Master Reimbursement Agreement between the City of Stockton, Arch Road Limited Partnership, and Opus West Construction Corporation, authorized by City Council Resolution Number 08-0365 (adopted September 9, 2008; the “Master Reimbursement Agreement”), the Arch Road Limited Partnership and Opus West Construction Corporation have prepared, and the Director of Municipal Utilities has approved, the cost estimates, plans, and specifications for the design and construction and installation of the Arch and Mariposa Roads Water Transmission Mains Project (the “Improvements”); and

Arch Road Limited Partnership and Opus West Construction Corporation proceeded to install a portion of the Improvements prior to the issuance of a Notice to Proceed, as required by Section 2, et seq. of the Terms and Conditions contained in the Master Reimbursement Agreement; and

The installation of the Improvements prior to receiving a Notice to Proceed is contrary to the conditions in the Master Reimbursement Agreement, and thus, a new agreement is necessary in order to establish the necessary financial mechanism to reimburse the Developer for the design and construction of the completed Improvements; and

Developer has funded the design and construction of the Improvements; and

The Developer has requested reimbursement of the Completed Improvements; and

City Atty: ____________________________
Review: ____________________________
Date: February 24, 2009
In accordance with the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code, the Developer is entitled to reimbursement for the cost of design and construction of the Improvements in excess of those required to serve the developer’s project, Opus Logistics Center; and

The 24-inch water transmission main on Arch Road and Logistics Drive, and 16-inch water transmission main along a public utility easement are in excess of those required to serve the developer’s project, Opus Logistics Center; and

The Developer has provided sufficient documentation substantiating the cost of the Improvements to the satisfaction of the Director of Municipal Utilities; and

It is anticipated that the Developer will request additional reimbursement to perform the balance of the work of the Improvements pursuant to the reimbursement procedures set forth in the Master Reimbursement Agreement; and

In regards to environmental clearance and General Plan Conformity, the City Council certified the Final Initial Study/Mitigated Negative Declaration (MUD IS1-08), and adopted the findings and mitigation monitoring program for the Arch and Mariposa Roads Water Transmission Mains Project on September 9, 2008 (City Council Resolution Number 08-0364); and

On September 9, 2008, the City Council determined that the Arch and Mariposa Roads Water Transmission Mains Project conforms to the City of Stockton General Plan (Policy Document and Land Use/Circulation Diagram), adopted December 11, 2007 (City Council Resolution Number 08-0364); now, therefore,

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

1. The Completed Improvements were constructed in accordance to City standards, and inspected by the City.

2. The Completed Improvements are in excess of those required to serve the Developer’s project.

3. The Improvements are necessary to support the growth of commercial and industrial development in southeast Stockton.

4. Given the above findings, entering into the agreement (attached as Exhibit A) between the City of Stockton and Arch Road Limited partnership and Opus West Construction Corporation would be in the best interests of the City.
5. The City Manager is authorized to execute the Reimbursement Agreement for the Arch Road and Logistics Drive Water Transmission Mains Reimbursement Agreement, and to take such other actions as are appropriate to carry out the intent of this Resolution.

PASSED, APPROVED and ADOPTED ____________________________.

ANN JOHNSTON, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
ARCH ROAD AND LOGISTICS DRIVE WATER TRANSMISSION MAINS
REIMBURSEMENT AGREEMENT

(2008/2009 CIP #423-7623-670)

This AGREEMENT is made and entered into on February 24, 2009 at Stockton, California by
and between the CITY OF STOCKTON ("CITY"), a Municipal Corporation and ARCH ROAD
LIMITED PARTNERSHIP ("ARLP"), a Delaware limited partnership, and OPUS WEST
CONSTRUCTION CORPORATION ("OWCC"), a Minnesota corporation (ARLP and OWCC
are collectively "DEVELOPER").

WHEREAS, the "Water Master Plan", adopted by the City Council on August 12, 2008,
identified the extension of a twenty-four (24)-inch water transmission main from the intersection
of Newcastle and Arch Roads to Mariposa Road at North Littlejohn Creek, as more fully shown
in the diagram attached hereto as Exhibit "A"; and

WHEREAS, DEVELOPER is currently developing approximately 474 acres as part of the Opus
Logistic Center, located on the north side of Arch Road, south of Mariposa Road and east of
Newcastle Road ("Project"); and

WHEREAS, the CITY believes that it would be more cost effective and efficient to the CITY for
DEVELOPER to design and construct the water system improvements ("Improvements") in
conjunction with other street improvements which DEVELOPER is providing for the Project;
and

WHEREAS, DEVELOPER has agreed to design and construct the Improvements provided
DEVELOPER is paid for the design and construction costs of such Improvements as provided
for herein; and

WHEREAS, DEVELOPER funded design and construction of Improvements, and
Improvements are eligible for reimbursement through the Water Transmission Mains CIP #423-
7623-670 account pursuant to the Master Agreement (defined below); and

WHEREAS, CITY and DEVELOPER entered into that certain Arch & Mariposa Roads Water
Transmission Mains Reimbursement Agreement ("Master Reimbursement Agreement" or
"MRA") which was duly executed and approved by City Council on September 9, 2008 as well
as Stockton City Council Resolution No. 08-0365, among others, authorizing the execution of a
Reimbursement Agreement for the design, construction, construction management, and
administrative services, etc. covering a broad range of Improvements as specifically defined in
the MRA; and

WHEREAS, the intent of this Agreement is to define those Improvements which have been
completed as of the date of this Agreement, as more fully set forth in Exhibit "C" ("Completed
Improvements"), which are now eligible for reimbursement and to specify the terms of such
reimbursement; and
WHEREAS, the Agreement is entered into pursuant to the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code to reimburse DEVELOPER for the cost of design and construction of Improvements in excess of those required to serve the Opus Logistic Center; and

WHEREAS, the twenty-four (24)-inch water waterline is considered a water transmission main intended to convey potable water from the South Stockton Aqueduct to southeast Stockton and not intended for local distribution purposes, thus the water main is considered in excess of what is necessary to serve the Opus Logistic Center; and

WHEREAS, a small portion of the Improvements included upsizing a twelve (12)-inch main to a sixteen (16)-inch water main, and thus, pursuant to Resolution 02-0331, dated May 28, 2002, CITY’S Schedule of Water Rate Fees and Regulations provides for reimbursement by CITY for the incremental cost of water mains larger than 12-in diameter that are not required for DEVELOPER’S project.

NOW, THEREFORE, IN CONSIDERATION of these premises and the mutual promises contained herein the parties hereto agree as follows:

1. **Recitals**

   Each of the parties hereto represents and warrants each to the other, that the above recitals are true and correct. The MRA is hereby incorporated in this Agreement by reference.

2. **Eligibility for Reimbursement**

   DEVELOPER has provided sufficient documentation substantiating the cost of the Improvements to the satisfaction of the Director of Municipal Utilities. For the purposes of reimbursement for the Completed Improvements only, City agrees to waive the Reimbursement Procedures set forth in Section 6, *et seq.* of the MRA and further agrees that all the Direct Costs set forth in Exhibit “B” are ready for reimbursement pursuant to the terms of this Agreement.

   CITY agrees that the following are now eligible for reimbursement: the cost of design, construction, inspection fees, and administrative fees for the water system Improvements in excess of DEVELOPER’S responsibility, as shown on Exhibit “B”, Reimbursement Summary, attached hereto (the “Approved Costs”). The incremental costs shown on Exhibit “B” are the only costs currently eligible for reimbursement under this Agreement; however, nothing in this Agreement is intended to modify or waive Developer and City’s rights and obligations under either (a) this Agreement for reimbursement for the Waterway Crossings work (defined in Section 3) or (b) the MRA as to reimbursement for Direct Costs incurred for the remainder of the Improvements as more fully specified in the MRA.

3. **Construction and Acceptance of Water System Improvements**

   DEVELOPER designed and constructed approximately 8,039-ft of twenty-four (24)-in diameter water main on Arch Road, Logistics Drive, and within a public utility easement, and approximately 2,624-ft of sixteen (16)-in diameter water main within a public utility easement, together with appurtenances, all as shown on Exhibit “A”.

301662195.3
Construction of the Completed Improvements was at all times subject to inspection and testing by CITY.

All water system improvements shown on Exhibit "A" have been completed, except for a portion of the improvements where they cross Weber Slough (the "Waterway Crossings"), as more fully specified on Exhibit "C", in accordance with CITY Standards and Specifications. It is anticipated that the Waterway Crossings will be completed in the spring of 2009 when permit conditions allow. Upon completion of the Waterway Crossings, record drawings of the Completed Improvements will be submitted to CITY and DEVELOPER will seek reimbursement for allowable costs by submitting a request for reimbursement in accordance with this Agreement and in form similar to Exhibit "B."

4. **Reimbursement Plan**

CITY agrees to reimburse DEVELOPER for the incremental cost of water system improvements for SUBDIVISION in excess of DEVELOPER'S responsibility. Despite the reimbursement procedures set forth in the MRA, reimbursement of the Approved Costs will be made as a one-time lump sum payment.

The lump sum payment for the Completed Improvements shown on Exhibit "B" shall be paid to DEVELOPER by CITY within thirty (30) days of the mutual execution of this Agreement. Such lump sum payment shall constitute CITY'S entire reimbursement responsibility to DEVELOPER for the Completed Improvements; except, however, DEVELOPER shall also be entitled to seek reimbursement for the Waterway Crossings upon completion, pursuant to the terms of this Agreement, as supplemented or amended from time to time. It is anticipated that Developer will request additional reimbursements as to work performed on the balance of the Improvements pursuant to the reimbursement procedures set forth in the MRA.

5. **Indemnification and Hold Harmless**

Commencing with the start of work on the Completed Improvements shown on Exhibits "A" and "C", and continuing for a period of one (1) year following CITY's acceptance of the water system improvements, DEVELOPER shall assume the defense of, indemnify, and hold harmless CITY, its officers, directors, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from this Agreement, the design, engineering and construction of such improvements, and any claims of persons employed to construct such improvements, except, however, with respect to matters arising out any negligent or intentional misconduct by the CITY or its offices, employees and/or agents. No provisions of this Agreement shall in any way limit the extent of the responsibility of DEVELOPER for payment of damages resulting from the operations of DEVELOPER or its contractors.
6. **Relationship to Public Works**

The parties hereto agree that this Agreement is for the reimbursement to DEVELOPER by CITY for costs incurred to construct water system improvements shown on Exhibits “A” and “C”, inclusive, and is not, nor is it intended to be, a public works contract. In performing this Agreement, DEVELOPER is an independent contractor and not the agent of CITY. CITY shall not have the responsibility for payment to any contractor or supplier of DEVELOPER.

7. **Compliance with State and Federal Laws**

DEVELOPER shall be responsible for compliance with all applicable Federal, State and local laws including, but not limited to prevailing wages.

8. **Attorney’s Fees**

In the event of the bringing of action or suit by either party against the other arising out of this Agreement the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney’s fees.

9. **Notices**

Any notices given pursuant to this Agreement shall be in writing and delivered in person, or sent by certified mail, postage prepaid, return receipt requested, or sent by facsimile or email, and shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if mailed, upon the date of receipt as disclosed on the return receipt; or (c) if given by facsimile or email, when sent. Notices required to be given to the parties shall be addressed as follows:

**CITY:**

Mark J. Madison  
Director of Municipal Utilities  
City of Stockton  
2500 Navy Drive  
Stockton, CA 95206  
(209) 937-8750 / Fax (209) 937-8708

**with a copy to:**

Richard E. Nosky, Jr.  
City Attorney  
City of Stockton  
425 North El Dorado Street, 2nd Floor  
Stockton, CA 95202

**DEVELOPER:**

Arch Road Limited Partnership  
c/o Opus West Construction Corporation  
Attn: Jeff Smith  
180 Promenade Circle, Suite 115  
Sacramento, CA 95834  
Facsimile: (916) 928-7509  
Email: jeff.smith@opuswest.com
Either party may change its address by notice in writing to the other party, and thereafter, notices shall be addressed and transmitted to the new address.

10. **Severability**

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

11. **Final Approval and Effective Date**

This Agreement and all amendments thereto are subject to final approval of the City Council of CITY and shall be effective on the date approved by the Council.

12. **Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

13. **Applicable Law**

The provisions of this Agreement and any and all disputes arising therefrom shall be governed by the laws of the State of California.


Except with respect to the MRA and to the supplemental documents to be submitted for reimbursement of the Waterway Crossings work, this Agreement contains the entire agreement between the parties with regard to the matters set forth. There are no additional written or oral agreements or promises between the parties concerning these matters which are not expressly set forth in this Agreement. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as this Agreement. In the event of any inconsistencies between the terms of the MRA and the terms of this Agreement, the latter shall prevail. In all other respects, the provisions of the MRA are affirmed and ratified.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF STOCKTON

J. GORDON PALMER, JR.
City Manager

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

ARCH ROAD LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Stockto GP, L.L.C.,

A Delaware limited liability partnership company, its general partner

By:

Name: Wade C. Lau
Title: Vice President

Opus West Construction Corporation,
a Minnesota corporation

By:

Name: Jeffrey B. Smith
Title: VP Construction

Approved as to form:

JOHN M. LUEBBERKE
Assistant City Attorney

Approved by City Council Resolution No. on , 2009.
Exhibit A
Arch Road and Logistics Drive Water Transmission Mains

NORTH LITTLE JOHNS CREEK

NEWCASTLE RD

16" W  16" W  24" W

ARCHED

WEBER SLOUGH

LOGISTICS DR

24" W

WATERWAY CROSSING

24" Full Reimbursement
16" Partial Reimbursement for upsizing from a 12" to 16"
**EXHIBIT B**
**REIMBURSEMENT SUMMARY**

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>$1,259,527.22</td>
</tr>
<tr>
<td>Opus West Construction Corporation Administrative Fee</td>
<td>$75,571.63</td>
</tr>
<tr>
<td>Opus West Construction Corporation Fee</td>
<td>$84,480.29</td>
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<td><strong>TOTAL</strong></td>
<td><strong>$1,419,579.14</strong></td>
</tr>
</tbody>
</table>
Exhibit C
Arch Road and Logistics Drive Water Transmission Mains

FUTURE

NORTH LITTLE JOHNS CREEK

COMPLETE

16" W  16" W  24" W

24" W

WATERWAY CROSSING

WEBER SLOUGH