

Resolution No. **07-0489****STOCKTON CITY COUNCIL****RESOLUTION AUTHORIZING APPROVAL OF THE REIMBURSEMENT AGREEMENT
BETWEEN THE CITY OF STOCKTON AND VASCORP INVESTMENTS
CORPORATION, INC., FOR THE HOLMAN ROAD BRIDGE OVER BEAR CREEK IN AN
AMOUNT NOT TO EXCEED \$3,095,241**

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

1. The Reimbursement Agreement between the City of Stockton and Vascorp Investments Corporation, Inc., a California S Corporation, for the Holman Road Bridge over Bear Creek, in an amount not to exceed Three Million Ninety-five Thousand Two Hundred Forty-one Dollars (\$3,095,241) is hereby approved.

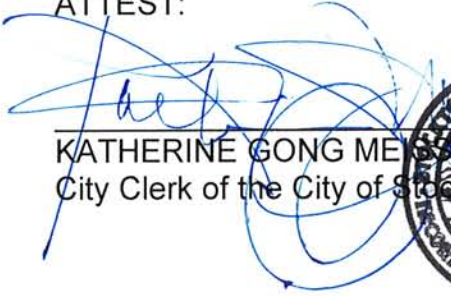
2. The City Manager is hereby authorized to execute said Agreement between the City of Stockton and Vascorp Investments Corporation, a California S Corporation, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

3. The City Manager is hereby authorized and directed to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED and ADOPTED NOV 27 2007.


EDWARD J. CHAVEZ
Mayor of the City of Stockton

ATTEST:


KATHERINE GONG MEISNER
City Clerk of the City of Stockton



City Atty: 
Review _____
Date NOV 16 2007

REIMBURSEMENT AGREEMENT HOLMAN ROAD BRIDGE OVER BEAR CREEK

THIS AGREEMENT is made and entered into on NOV 27 2007, 2007, at Stockton, California, by and between the CITY OF STOCKTON, a Municipal Corporation ("CITY"), and VASCORP INVESTMENTS CORPORATION, INC, a California S Corporation ("DEVELOPER").

WHEREAS, CITY has approved a tentative subdivision map entitled CANNERY PARK" (TM 8-04A and TM 8-04B). Subsequent final subdivision maps and agreements were approved by CITY and recorded in the San Joaquin County Recorder's Office; and

WHEREAS, as a condition of approval of said tentative maps and final subdivisions, DEVELOPER has agreed to design, install and construct certain public improvements and/or facilities, including the construction of the Holman Road Bridge over Bear Creek and the interim 2-lane Holman Road from Bear Creek to its current terminus at the Woodbridge Irrigation District crossing (collectively "Improvements"); and

WHEREAS, CITY has identified the Improvements as necessary and eligible for reimbursement pursuant to the City-adopted Resolution No. 91-0119 on February 12, 1991, and effective April 15, 1991, entitled "Public Facilities Fee Program Administrative Guidelines" ("Guidelines") and all amendments thereto to date, which specifies when a developer is eligible for a credit or reimbursement of public facilities fees and/or other fees, such as water connection fees and sewer connection fees, imposed on new development; and

WHEREAS, All development within the general area of the subdivision has or will participate in the payment of Public Facilities Fees ("Fee") at the time of the issuance of building permits, which Fee is collected to provide for the development's proportionate share of public improvements; and

WHEREAS, DEVELOPER prepared and completed the bridge improvement plans and specifications which was approved by the CITY on November 30, 2006; and

WHEREAS, DEVELOPER has acquired the necessary permits from responsible agencies for the bridge construction over Bear Creek; and

WHEREAS, DEVELOPER agrees to enter into a contract with a contractor who will agree to perform the work included in the Improvements in accordance with the approved plans and specifications; and

WHEREAS, any amendment to this Agreement will be subject to further approval of the CITY; and

WHEREAS, The intent of this Agreement is to define the Improvements eligible for reimbursement as established by the Guidelines as well as the terms of such reimbursement; and

WHEREAS, this Agreement is entered into pursuant to the provisions of the Subdivision Map Act of the State of California, the Stockton Municipal Code, the Guidelines and Regulations, to provide for the reimbursement of the Improvements which will be constructed.

NOW, THEREFORE, for and in consideration of these promises and for 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.

2. **REIMBURSEMENT PLAN**: Pursuant to the Guidelines CITY agrees that the Improvements as shown in Exhibit "A" attached hereto and made a part hereof are eligible for reimbursement. DEVELOPER agrees to construct such Improvements pursuant to this Agreement, provided that CITY reimburses DEVELOPER for all such reasonably incurred eligible costs. CITY's reimbursement will be in accordance with the terms of this Agreement. CITY agrees that the amount of the reimbursement to be paid to DEVELOPER shall include all eligible costs incurred by DEVELOPER in constructing the Improvements, including but not limited to construction staking and inspection fees.

CITY and DEVELOPER agree that with the exception of construction management and construction staking, any engineering or surveying fees and costs, any consultants, legal, or third party fees or costs, any permit, utility, governmental or other agency fees, any financing fees, and other applicable out of pocket expenses that DEVELOPER has incurred will be reimbursed to the DEVELOPER pursuant to the terms of a future reimbursement agreement.

3. **COSTS**: The estimated cost of constructing the PFF-eligible Improvements is \$2,835,792 as is set forth on Exhibit B, attached hereto and made a part hereof. The actual cost to complete the Improvements may include other or additional items of work not included on Exhibit B, but which are necessary or desirable to construct the Improvements. The estimated cost shall be amended and updated by DEVELOPER prior to CITY's acceptance of the Improvements to reflect actual construction costs to be reimbursed to DEVELOPER. Said amendment does not require City Council approval so long as the total estimated costs do not exceed \$3,095,241

Not more frequently than once a month, DEVELOPER shall submit to CITY a written statement for the value of all work done and for which payment has not been made to DEVELOPER. Any statements submitted shall be paid within 30 days of receipt of such statement provided that the developer has provided the CITY with proof that the DEVELOPER's contractors have been paid for the work for which the

reimbursement is being requested. The proof of payment may be in the form of mechanics lien release on progress payment or other form acceptable to the CITY.

4. SUBSTANTIATION OF COSTS: DEVELOPER shall provide any documentation substantiating the cost of the Improvements reasonably requested by the City Engineer or the City's Chief Financial Officer. There shall be a presumption of reasonableness as to costs incurred under a contract entered into by DEVELOPER.

5. PERFORMANCE, AND LABOR AND MATERIALS BONDS: DEVELOPER provided security in the amount of \$2,060,460 for the Holman Road Bridge over Bear Creek construction, and \$1,949,747 for the construction of Holman Road from Villa Antinori to Eight Mile Road, securing payment to the contractor, his subcontractors, and to persons furnishing labor, materials or equipment which may be released 60 days after recording a Notice of Completion provided that CITY has finally accepted the work and provided no claims of lien have been filed with CITY.

6. WARRANTY BOND: DEVELOPER shall provide security of at least ten percent (10%) of the Improvements cost to CITY to guarantee and warrant the work for one (1) year following the date of such acceptance of the work. The security shall be either a letter of credit from an institutional bank or corporate surety company authorized to transact business in the State of California; and the form thereof shall be satisfactory to the City Attorney and the City Administrative Services Officer. The security guaranteeing that the completed work remains satisfactory during the one (1) year warranty period shall be released upon correction, by DEVELOPER, of any defects in the work existing at the end of the warranty period.

7. AUDIT: CITY or its designee shall have the right, during normal business hours and upon the giving of ten(10) days written notice to DEVELOPER, to inspect and copy all books, records, accounts and other written material of DEVELOPER pertaining to costs and expenses incurred by DEVELOPER in designing and permitting any of the improvements described in this Agreement. DEVELOPER further agrees to maintain such records for a period of three years after final payment under this Agreement. Upon request, DEVELOPER agrees to furnish CITY, or a designated representative, with necessary information and assistance.

8. 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:

City Engineer
22 E. Weber Avenue, Room 301
Stockton, CA 95202
(209) 937-8400 / Fax (209) 937-8277

With a copy to: Richard E. Nosky, Jr.
City Attorney
City of Stockton
425 N. El Dorado Street, 2nd Floor
Stockton, CA 95202

DEVELOPER: VASCORP Investments Corporation, Inc.
Attention: Matt Arnaiz
3400 East Eight Mile Road, Suite A
Stockton, CA 95212
(209) 931-9740 / Fax (209) 931-9741

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.

9. **ATTORNEY'S FEES**: In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys fees.

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

11. **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assignees of the parties hereto.

12. **INDEMNIFICATION AND HOLD HARMLESS**: Commencing with the start of design and engineering work on the improvements and continuing for a period of two years following the CITY's acceptance of the constructed improvements, the DEVELOPER shall assume the defense of, indemnify and hold harmless CITY, its officers, employees and agents and each and everyone of them, from and against all actions damages, claims, losses or expense 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 the improvements, or claims of persons employed to construct the improvements. No portion of this agreement shall in any way limit the extent of responsibility of DEVELOPER for payment of damages resulting from the operations of DEVELOPER or its contractors.

13. **RELATIONSHIP TO PUBLIC WORKS**: The parties hereto agree that this Agreement is for the payment to DEVELOPER by CITY for costs incurred to design, permit and construct certain improvements and is not, nor is it intended to be, a public works contract. In performing this Agreement, DEVELOPER is not the agent of CITY.

14. **ACCEPTANCE**: CITY shall accept the Improvements upon completion of the work in accordance with the approved plans and specifications, and said acceptance by the CITY of the Improvements shall be deemed to be partial satisfaction of DEVELOPER'S obligations under condition 11 of TM 8-04A and TM 8-04B.

15. **COUNTERPARTS**: This Agreement may be executed in counterparts, each of which shall be deemed an original

16. **AMENDMENTS**: Amendments, supplements and/or modifications to this Agreement shall be made only by written instrument executed by each of the parties hereto and in the same manner as this Agreement.

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

ATTEST:

CITY OF STOCKTON, a municipal
corporation

KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF STOCKTON

By: _____
J. GORDON PALMER, JR.
CITY MANAGER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

VASCORP INVESTMENTS CORPORATION, INC.
A CALIFORNIA S CORPORATION

By: 
CITY ATTORNEY

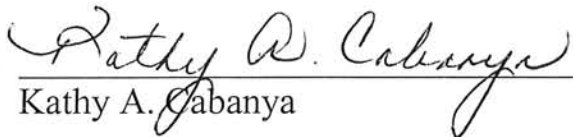
By: 
Name: Matthew Arnaiz
Title: Sec/Treas

Approved by City Council Resolution No. _____ on _____.

STATE OF CALIFORNIA }
 } ss.
COUNTY OF SAN JOAQUIN }

On October 29, 2007, before me, Kathy A. Cabanya, a Notary Public in and for said State, personally appeared MATTHEW ARNAIZ, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person on the instrument acted, executed the instrument.

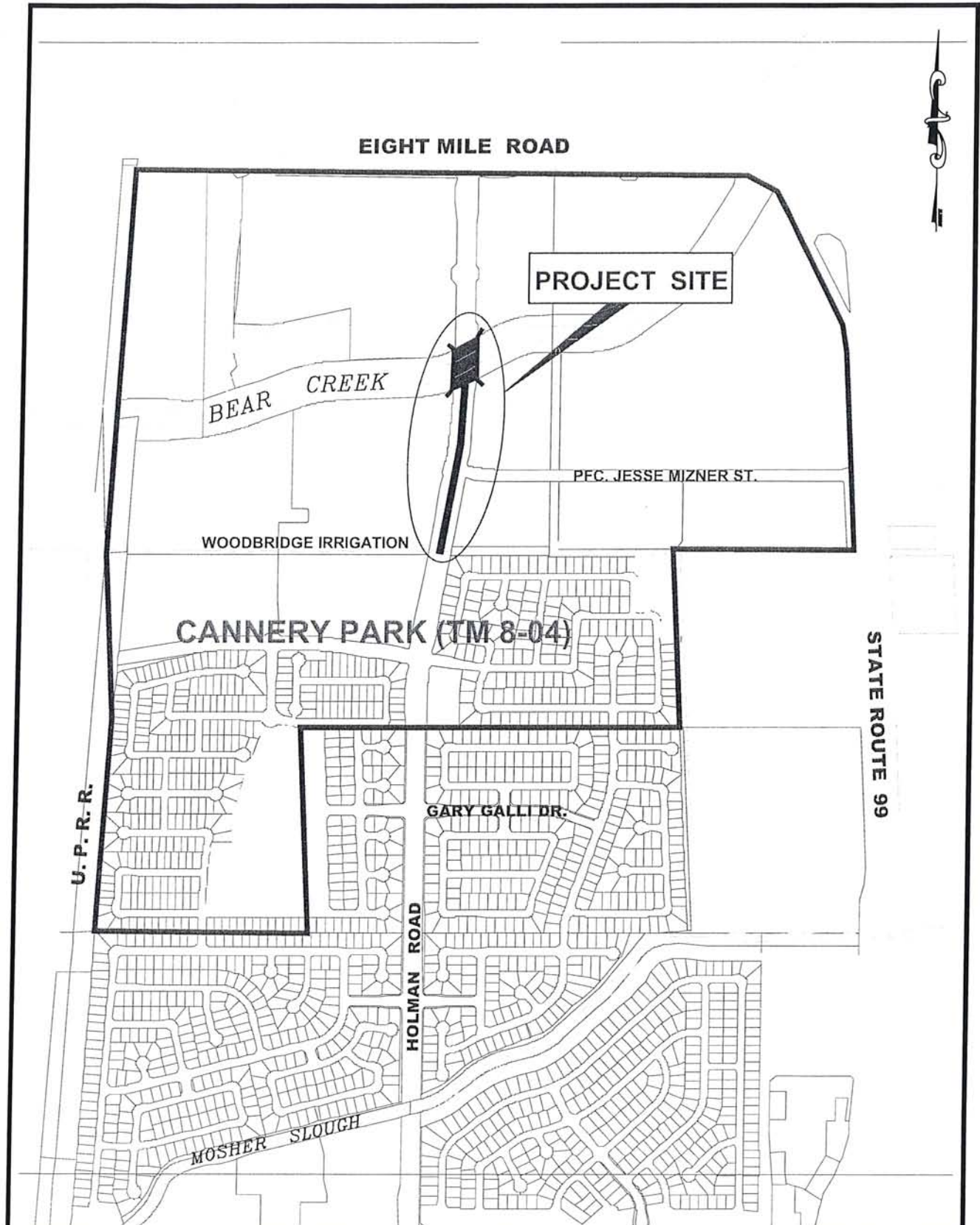
WITNESS my hand and official seal.


Kathy A. Cabanya

My Commission expires: May 4, 2011

{Seal}





NO.	REV. DATE	BY	APRVD.	Holman Road Bridge over Bear Creek and 2-Lane Interim Improvements Vicinity Map		APPROVED BY	
DWC. BY		GMB				CITY ENGINEER	
CK. BY				CITY OF STOCKTON DEPARTMENT OF PUBLIC WORKS		DATE	DRAWING NO.
SCALE		NONE				Date	

COST ESTIMATE						
CANNERY PARK - HOLMAN ROAD BRIDGE OVER BEAR CREEK and						
HOLMAN ROAD - 2 LANE INTERIM IMPROVEMENTS - VILLAGE D to BEAR CREEK						
STATION 107+00.00 TO Station 122+02.67 (N End of Bridge)						
A. SITE PREPARATION	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Site Clearing	LS	1	3,750.00	3,750	3,750	
2. Rough Grading	LS	1	60,000.00	60,000	60,000	
3. Erosion Control	LS	1	15,000.00	15,000	15,000	
4. Construction Entrance	LS	1	5,000.00	5,000	5,000	
Totals				83,750	83,750	-
B. SANITARY SEWER	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Jack and Bore under Bear Creek	LS	1	267,250.00	267,250		267,250
Totals				267,250	-	267,250
C. STORM DRAIN	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Field Inlets	EA	2	1,700.00	3,400		3,400
2. 12" Storm PVC	LF	342	50.00	17,100		17,100
3. Standard Manhole (Type 1)	EA	1	3,500.00	3,500		3,500
4. Connect to Existing	EA	1	500.00	500		500
Totals				24,500	-	24,500
D. WATER		QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. 16" DIP	LF	376	120.00	45,120		45,120
2. 16" PVC C-905	LF	464	90.00	41,760		41,760
3. 16" Butterfly Valve	EA	3	1,800.00	5,400		5,400
4. Irrigation Sleeves	EA	1	7,000.00	7,000	7,000	
Totals				99,280	7,000	92,280
E. CONCRETE	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. 6" Extruded Curb (Replaced with AC dike)	LF	2,600	4.00	10,400		10,400
2. Type F Curb & Gutter w/ 4" AB	LF	2,440	21.00	51,240	51,240	
Totals				61,640	51,240	10,400
F. PAVING	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. 3.5" AC / 17.50" AB (20' Lanes)	SF	60,000	4.80	288,000	288,000	
2. Monument Wells	EA	3	225.00	675		675
Totals				288,675	288,000	675
G. ELECTROLIERS	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. 200W HPS Electrolier	EA	6	6,200.00	37,200		37,200
2. 150W HPS Electrolier	EA	4	5,500.00	22,000		22,000
Totals				59,200	-	59,200
H. MISCELLANEOUS	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Striping	LS	1	6,250.00	6,250		6,250
2. Signal Interconnect	LF	1,375	8.00	11,000		11,000
3. Traffic Signal Conduit	LS	1	5,000.00	5,000		5,000
Totals				22,250	-	22,250
Holman Road Const SubTotals				906,545	429,990	476,555
10% Contingency				90,655	42,999	47,656
I. FEES	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Construction Staking	LS	1	43,208	43,208	20,494	22,714
2. Project Management	LS	1	45,327	45,327	21,500	23,828
3. City Inspection	LS	1	12,962	12,962	6,148	6,814
Holman Road Fees Sub Totals				101,497	48,142	53,355
Holman Road Totals				1,098,697	521,131	577,566

J. HOLMAN ROAD BRIDGE	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Bridge Construction	LS	1	2,164,500.00	2,164,500	2,164,500	
Holman Bridge Const Sub Totals				2,164,500	2,164,500	-
10% Contingency				216,450	216,450	-
K. FEES	UNIT	QTY	UNIT COST	AMOUNT	PFF COST	OWNER COST
1. Construction Staking	LS	1	20,000	20,000	20,000	
2. Project Management	LS	1	108,225	108,225	108,225	
3. City Inspection	LS	1	64,935	64,935	64,935	
Holman Bridge Fees Sub Totals				193,160	193,160	-
Holman Bridge Totals				2,574,110	2,574,110	-
GRAND TOTAL				3,672,807	3,095,241	577,566
GRAND TOTAL LESS CONTINGENCY				3,365,702	2,835,792	529,910