

Resolution No. **06-0216**

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING APPROVAL OF A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF STOCKTON AND WOODSIDE NORTHBROOK ESTATES, INC., A CALIFORNIA CORPORATION, FOR DESIGN IMPROVEMENTS FOR LOWER SACRAMENTO ROAD

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

1. The Lower Sacramento Road Reimbursement Agreement between the City of Stockton and Woodside Northbrook Estates, Inc., a California corporation, in the amount of Two Hundred Twenty-seven Thousand Five Hundred (\$227,500) is hereby approved.

2. The City Manager is hereby authorized and directed to execute said Agreement between the City of Stockton and Woodside Northbrook Estates, Inc., a California corporation, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

3. The City Manager is hereby authorized to appropriate the following funds:

<u>APPROPRIATE FROM</u>	<u>Amount</u>
Account No. 911-0000-288	
Street Improvements FA #1	\$227,500

<u>APPROPRIATE TO</u>	<u>Amount</u>
Account No. 911-9261-640.20-61	
Lower Sacramento Road Reimbursement Agreement	\$227,500

PASSED, APPROVED and ADOPTED APR 25 2006

ATTEST:

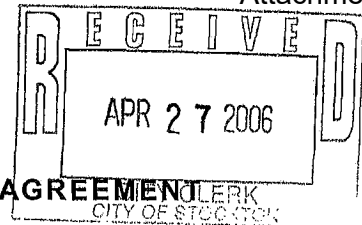
Karen Gong Meissner
for KATHERINE GONG MEISSNER
City Clerk of the City of Stockton



Edward J. Chavez
EDWARD J. CHAVEZ
Mayor of the City of Stockton

City Atty: *GOP*
Review _____
Date APR 14 2006

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C-06-098 (wp)

LOWER SACRAMENTO ROAD REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered on April 25, 2006, by and between the CITY OF STOCKTON, hereinafter referred to as the "CITY", and WOODSIDE NORTHBROOK ESTATES, INC., a California corporation, or its successors in interest or assignee, collectively hereinafter referred to as the "DEVELOPER".

WHEREAS, DEVELOPER has previously received approval from the CITY for a tentative subdivision map entitled "Northbrook" (TM 45-04) ("Project"); and

WHEREAS, DEVELOPER, subject to the terms of this Agreement, has agreed to design certain public improvements and/or facilities, including widening Lower Sacramento Road to four lanes along the Northbrook project frontage and northerly to Eight Mile Road, and the roadway transition for Lower Sacramento Road to tie the four-lane configuration into the existing roadway width south of the Northbrook project boundary, which improvements are more particularly described in Exhibit "A" attached hereto ("Improvements"), which are to benefit said development, correct existing deficiencies, and benefit other areas of the CITY; and

WHEREAS, The CITY believes that it would be more cost effective to the CITY for DEVELOPER to design the Improvements in conjunction with other street improvements which DEVELOPER is providing for the Project, and DEVELOPER agrees to design the Improvements provided DEVELOPER is paid for the design cost of such Improvements as provided for herein; and

WHEREAS, The CITY and DEVELOPER, upon the completion of the design of said improvements, will amend this agreement to allow for additional reimbursement for the costs to complete construction of designed improvements; and

WHEREAS, The CITY has identified the Improvements as necessary and being eligible for reimbursement pursuant to the CITY standards and guidelines as provided for herein; and

WHEREAS, All residential and commercial development within the general area of the Project will participate in public facilities fees ("Fee") at the time of the issuance of building permits, which Fee is collected to provide for development's proportionate share of public improvements; and

WHEREAS, This Agreement includes only for the cost of the design and permits for the Improvements, and upon completion of the design and permits, DEVELOPER will request an amendment to the Agreement to reimburse the DEVELOPER for the costs of constructing the Improvements; and

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

WHEREAS, This Agreement is entered into pursuant to the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code to provide for reimbursement for the costs of the design and permitting of the Improvements to be constructed; and

WHEREAS, prior to submitting any requests for reimbursement for the costs of the design and permitting of the Improvements, the DEVELOPER shall first provide a copy of the bids for construction of said Improvements.

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**: CITY acknowledges that it shares responsibility to design, construct and pay for the Improvements described in Exhibit A, attached hereto and made a part hereof. DEVELOPER agrees to design and permit such Improvements pursuant to this Agreement, provided that CITY reimburses DEVELOPER for all such applicable costs. The CITY's reimbursement will be paid to the DEVELOPER in progress payments with the first payment due after CITY has reviewed construction bids for the designed Improvements. Subsequent payments shall be paid in no less than thirty (30) day intervals. CITY agrees that the amount of the reimbursement to be paid to DEVELOPER shall include all eligible costs incurred by DEVELOPER, including but not limited to costs of any engineering or surveying fees and costs, any consultants, legal, construction management or third party fees or costs, any permit, utility, governmental or other agency fees, any bonding or financing fees, any right of way or other acquisition fee, and any other applicable out of pocket expense of DEVELOPER.

3. **COSTS**: The estimated cost of the design and permitting portion of these Improvements is two hundred twenty-seven thousand, and five hundred dollars (\$227,500.00), as is set forth in 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 complete the engineering design of the Improvements and shall include up to an additional ten percent (10%) of the total estimated costs, not to exceed two hundred fifty thousand, and two hundred fifty dollars (\$250,250.00). The estimated cost shall be amended and updated by DEVELOPER based on actual paid invoices to reflect actual project costs to be reimbursed to DEVELOPER.

DEVELOPER agrees to enter into a contract with an engineering firm who will agree to perform the work included in Exhibit A.

4. **SUBSTANTIATION OF COSTS**: DEVELOPER shall provide documentation in the form of construction bids for the designed improvements, substantiating the design cost of the Improvements. CITY will use the construction bids to verify the reasonableness of costs incurred under the design contract entered into by DEVELOPER. The CITY's reasonableness check of the design cost will also include comparison to design cost amounts from prior reimbursements.

5. **AUDIT**: CITY or its designee shall have the right, during normal business hours and upon the giving of reasonable 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.

6. **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: Public Works Department
Attention: City Engineer
22 E. Weber Avenue, Room 301
Stockton, CA 95202

DEVELOPER: Woodside Northbrook Estates, Inc.
Attn: David Bennion
3509 Coffee Road, Suite D-10
Modesto, CA 95355
Facsimile: (209) 579-1110
Email: daveb@woodsidegroupinc.com

With a copy to: Woodside Group
Attn: Wayne Farnsworth
39 East Eagleridge Drive, Suite 102
North Salt Lake, UT 84054
Facsimile: (801) 813-8003
Email: waynef@woodsidegroupinc.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.

7. **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.

8. **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.

9. **SUCCESSORS AND ASSIGNS**: This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

10. **INDEMNIFICATION AND HOLD HARMLESS**: CITY acknowledges that the construction of the Improvements is for the benefit of the CITY and, therefore, agrees to look only to the contractor selected by DEVELOPER to perform the work of the Improvements.

11. **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.

12. **ACCEPTANCE**: Acceptance of the improvement design shall be through signed approval of the prepared improvement plans.

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

14. **AMENDMENTS:** Amendments 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:

KATHERINE GONG MEISSNER
CITY CLERK

BY *L. Gong Meissner*



CITY OF STOCKTON:

J. GORDON PALMER, JR.
CITY MANAGER

BY *J. Gordon Palmer, Jr.*

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY *Guy D. Petzold*

CITY ATTORNEY

WOODSIDE NORTHBROOK ESTATES,
INC., A CALIFORNIA CORPORATION

BY *Greg Yeager*

NAME *Greg Yeager*

TITLE *VP*

APPROVED BY CITY COUNCIL RESOLUTION NO. *06-0216*, ON *April 25*, 2006.

EXHIBIT A
IMPROVEMENTS

1. Design plans, specifications, engineering drawings and permitting for widening Lower Sacramento Road to four lanes (two north bound lanes and two south bound lanes), from Eight Mile Road, south to the northerly project boundary of Northbrook (TM 45-04).
2. Design plans, specifications, engineering drawings and permitting of Lower Sacramento Road to four lanes (two north bound lanes and two south bound lanes), along the Northbrook project frontage, except for curb, gutter, sidewalk, landscaping, street lights, traffic signals, and the first eighteen feet of roadway.
3. Design plans, specifications, engineering drawings and City/County/WID permitting for transitioning Lower Sacramento Road from four lanes to the existing Lower Sacramento Road cross-section south of the southerly project boundary of Northbrook, including the Woodbridge Irrigation District (WID) canal culvert extension.

EXHIBIT B**ESTIMATED DESIGN IMPROVEMENT COST**

1. Lower Sacramento Road Improvement Plans
 - a. Preliminary Geometric – Topographic / Layout Plan..... \$ 35,500.00
 - b. Construction Documents \$ 55,000.00
 - c. Phasing and Staging Plans \$ 14,500.00
2. Lower Sacramento Road/WID Crossing and Transitioning
 - a. Preliminary Geometric – Topographic / Layout Plan..... \$ 12,500.00
 - b. Construction Documents \$ 20,000.00
 - c. County & WID Permitting \$ 10,000.00
3. Right-of-Way Acquisition (if needed) \$ 20,000.00
4. Geotechnical Engineering..... \$ 18,000.00
(boring, AC coring, permitting, report, etc.)
5. Consultant Coordination \$ 12,000.00
(Utility Companies, Public Agencies, Title Companies)
6. Plan Checking – Public Agency Fees \$ 30,000.00
(City, County, WID, Utility Companies, etc.)

TOTAL \$ 227,500.00