

NORTHEAST STOCKTON WATER TRANSMISSION MAIN REIMBURSEMENT AGREEMENT

This Northeast Stockton Water Transmission Main Reimbursement Agreement (“Reimbursement Agreement”) is made and entered into on _____, 2024 by and between the City of Stockton, a municipal corporation, referred to as “CITY,” and H.D. Arnaiz Corporation, Inc., referred to as “DEVELOPER.”

RECITALS

The “Water Master Plan”, adopted by the City Council on February 23, 2021, contained certain recommended water system capital improvements; and

One of the capital improvements recommended in the Water Master Plan to improve water pressure and fire flow to northeast Stockton is the construction of approximately 17,600 lineal feet of new 24 inch diameter water transmission mains along West Lane between Bear Creek and Eight Mile Road, along Eight Mile Road between West Lane and the State Route 99 West Frontage Road, and along the State Route 99 West Frontage Road between Eight Mile Road and PFC Jesse Mizener Street as more fully set forth in Exhibit A; and

CITY desires to provide for the design and construction of the water transmission mains along West Lane between Bear Creek and Eight Mile Road, along Eight Mile Road between West Lane and the State Route 99 West Frontage Road, and along the State Route 99 West Frontage Road between Eight Mile Road and PFC Jesse Mizener Street (collectively the “Improvements”); and

CITY acknowledges that DEVELOPER has the knowledge and experience necessary to cause the preparation of plans and specifications for the design, construction, and installation of the Improvements consistent with review and approval by the Director of Municipal Utilities of CITY (the “Director”); and

CITY acknowledges that DEVELOPER has the expertise to perform construction management services for the construction and installation of the Improvements; and

DEVELOPER has agreed to design, construct and install, or cause the design, construction and installation of the Improvements consistent with Plans and Specifications to be approved by the Director of Municipal Utilities of CITY; and

DEVELOPER has engaged VVH Consulting Engineers as the Design Engineer (the “Engineer”) to conduct an alignment study, plans and specifications for the design of the Improvements at a cost “not to exceed” \$650,000 (the “Design Cost”); and

DEVELOPER has engaged the Engineer to prepare a cost estimate for the construction of the Improvements (the "Estimated Improvement Cost") as more fully set forth in Exhibit "B" where the Estimated Improvement Cost is \$11,127,625.00; and

CITY has agreed to reimburse DEVELOPER for costs incurred by DEVELOPER for the Design Cost, the Estimated Improvement Cost, plan check fees, inspection fees, construction management, construction staking, warranty bond, undercrossing permitting, and a reasonable amount for contingencies (collectively the "Total Estimated Reimbursement") as provided herein as \$15,817,379.38; and

CITY acknowledges that right-of-way may need to be acquired in the form of Fee Simple Title or Easement Deed; and

DEVELOPER has agreed, upon completion of the construction, installation of the Improvements, and reimbursement to DEVELOPER for costs incurred, to release and dedicate to CITY all right, title and interest of DEVELOPER in the Improvements; and

CITY has within its current approved budget the Water Capital Fund 6518-000-800007-600-605-00-65-000-000, which is intended to fund the costs of the design, construction, and installation of the Improvements; and

This Agreement is entered into pursuant to the provisions of the Subdivision Map Act of the State of California and the Stockton Municipal Code Chapter 16.72.210C to provide for the reimbursement to DEVELOPER for the costs of the design, construction and installation of the Improvements.

TERMS AND CONDITIONS

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.

2. **PREPARATION AND APPROVAL OF PLANS AND SPECIFICATIONS AND COST ESTIMATE:** DEVELOPER shall cause to be prepared, through the Design Engineer, an alignment study, cost estimates, plans and specifications for the design, construction and installation of the Improvements (the "Plans and Specifications"). The Plans and Specifications will be prepared in accordance with the Standard Plans and Specifications of CITY and will be a biddable set of documents prepared in the same manner as those prepared for CITY construction projects. DEVELOPER shall obtain approval by all appropriate government

agencies and City Departments of the Plans and Specifications, including the approval of the Director.

Following the Director's approval of the Plans and Specifications, DEVELOPER shall solicit a minimum of three competitive proposals (the "Proposals"), from construction companies experienced with pipeline and well construction, for the construction and installation of the Improvements. DEVELOPER will provide copies of the Proposals to the Director.

After a comprehensive review of the Proposals by DEVELOPER and consultation with the Director, DEVELOPER shall select a construction company (the "Selected Contractor") to negotiate final costs and contractual terms and conditions.

Once the Plans and Specifications are approved by the Director, and the Selected Contractor has been identified, the Director is authorized to direct the DEVELOPER to proceed with the construction and installation of the Improvements.

After the Notice to Proceed has been issued by the Director, DEVELOPER shall contract with the Selected Contractor for the construction and installation of the Improvements. The Selected Contractor shall furnish the CITY with original certificates for Commercial General Liability, Commercial Business Automobile Policy, Worker's Compensation Insurance, and Builder's Risk Insurance in the amounts specified and approved by CITY. The Selected Contractor shall include CITY and DEVELOPER as additional insured under the insurance policies referred to above.

3. CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS: After receiving Notice to Proceed from the Director, DEVELOPER shall acquire all necessary permits and shall cause the construction and installation of the Improvements in compliance with the approved Plans and Specifications.

Construction of the Improvements shall be subject, at all reasonable times prior to their acceptance, to inspection by the Director and the City Engineer, which shall be accomplished in a timely manner.

4. ACCEPTANCE OF IMPROVEMENTS:

4.1 Record Drawings. DEVELOPER shall provide record drawings or other similar plans and specifications of the Improvements in a form reasonably acceptable to the Director, along with evidence satisfactory to the Director that all costs of the Improvements have been fully paid to the party or parties entitled to be paid for such costs and that all, if any, liens have been cleared or released. All warranties, guarantees or other evidence of contingent obligations of third persons

with respect to the Improvements shall be delivered to the Director prior to acceptance of the Improvements.

In the event that the Improvements or any portion of them do not substantially conform to the Plans and Specifications, or if any defects are not corrected within a reasonable time as requested by CITY, CITY shall have the authority to order the necessary work done and to recover the costs of such work as well as any costs of enforcing such obligation, including attorney fees, from DEVELOPER.

4.2 Acceptance. To be accepted by CITY under this Reimbursement Agreement, (1) the Improvements must be completed substantially in accordance with the Plans and Specifications, (2) the as-built plans submitted, all applicable Operations and Maintenance Manuals submitted, equipment testing completed, and all training shall be complete, (3) the Improvements must be in such condition that they are ready for use by CITY or by the public as reasonably determined by the Director. In addition, prior to CITY's acceptance of the Improvements, DEVELOPER shall provide to the Director a Final Invoice of all costs for reimbursement under this Reimbursement Agreement.

5. REIMBURSEMENT:

5.1 Obligation. Subject to the limitations set forth in Sections 6 and 9 below, CITY agrees to reimburse DEVELOPER for all direct costs incurred in the preparation and approval of the alignment study, cost estimates, Plans and Specifications, plan check fees, inspection fees, construction staking cost, and the construction and installation of the Improvements. CITY further agrees that DEVELOPER shall also be reimbursed for the costs of any additional work and/or improvements not included in the cost estimates and/or not included in the contract with the Selected Contractor, provided said work and/or improvements, as approved by CITY in advance, are reasonably necessary for the design, installation and construction of the Improvements, including any cost incurred as a result of any changed conditions affecting the Improvements, force majeure, or any other unforeseen or extraordinary circumstance beyond DEVELOPER's reasonable control. However, eligible reimbursement costs shall not exceed the Total Estimated Reimbursement amount without prior approval of the City Manager or City Council.

5.2 Documentation. DEVELOPER shall provide any documentation substantiating the direct costs of the Improvements reasonably requested by the Director or CITY. There shall be a presumption of reasonableness as to costs incurred pursuant to, and in accordance with, both the construction contract with Selected Contractor and the Proposal submitted by such Selected Contractor.

5.3 Changes. In the event that the Director orders any change in the approved Plans and Specifications, the cost of such change shall, notwithstanding the fact that the addition of such cost will cause the total cost of construction to exceed the approved contractual amount, be added to the amount approved for reimbursement, so long as such total reimbursement amount remains less than the Total Estimated Reimbursement amount approved by City Council. If the addition of such costs would cause the direct costs to exceed the approved Total Estimated Reimbursement, the Director shall obtain the approval of the City Manager or City Council as appropriate, prior to giving DEVELOPER an order to proceed with the change. If any change in the approved Plans and Specifications results in a reduction in costs, the approved reimbursement amount shall be correspondingly reduced.

6. REIMBURSEMENT PROCEDURES: Subject to the limitations set forth in Sections 5 and 9, DEVELOPER shall be reimbursed on a monthly basis for costs incurred. DEVELOPER shall submit a voucher to CITY by the fifteenth (15th) of each month for costs and fees paid by DEVELOPER through end of the previous calendar month. All vouchers shall be supported by invoices and lien releases (if appropriate). If DEVELOPER is unable to obtain necessary lien waivers from any contractor(s) and/or subcontractor's, CITY will reimburse DEVELOPER so long as DEVELOPER provides for a retention, bond or other security in the amount of the reimbursement for which lien waivers are not provided and are necessary. CITY shall review the submitted material and if there are no disputed items, shall have until the fifteenth (15th) day of the following month to pay DEVELOPER the amounts not in dispute. If disputed items exist, CITY shall have an additional thirty (30) days to review the resubmitted material from DEVELOPER (as well as additional material reasonably requested by CITY to substantiate requested reimbursement amounts) and pay DEVELOPER the amounts CITY determines are warranted. The final payment for the Improvements shall be paid to DEVELOPER upon acceptance of the Improvements by CITY.

7. WARRANTY: CITY shall be provided cash, surety bond or certificate of deposit of at least ten percent (10%) of the cost of the Improvements to warranty the work for one (1) year following the date of CITY acceptance of the Improvements. The surety on the bond shall be a corporate surety company authorized to transact business in the State of California, and the form thereof shall be reasonably satisfactory to the City Attorney and the Administrative Services Officer of CITY. The security warranting that the completed work remains satisfactory during the required 1-year period shall be released at the end of the warranty period after correction of any defects in the work existing at the end of the warranty period, if any. The cost of such security will be reimbursed by the CITY.

8. INDEMNIFICATION & HOLD HARMLESS: To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and

its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton and its officers, officials, employees and volunteers. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

9. SOURCE OF REIMBURSEMENT FUNDING: Notwithstanding any other provision of this Reimbursement Agreement or any condition of project approval, CITY shall not be obligated to reimburse DEVELOPER from CITY General Fund, without express City Council approval. The Improvements are currently the subject of a CITY CIP, Water Capital Fund 6518-000-800007-600-605-00-65-000-000 account (the "Account"), and CITY warrants that the Account contains funds sufficient to satisfy the CITY's reimbursement obligation as provided herein. Should there arise from unforeseen circumstances any increase in the costs associated with the construction and installation of the Improvements that would cause the overall cost of the project to exceed the Total Estimated Reimbursement, the parties shall negotiate in good faith regarding their relative obligations arising there from and to the extent an increase in the Total Estimated Reimbursement is required, the approval will be considered and decided by the City Manager or City Council, as appropriate.

10. CITY COUNCIL APPROVAL: This Agreement is subject to the approval of the City Council of the City of Stockton and shall not be effective unless and until such approval has been obtained.

11. AUDIT: CITY or its designee shall have the right, during normal business hours and upon reasonable notice to DEVELOPER, to inspect and copy all books, records, accounts and other material of DEVELOPER pertaining to costs and expenses incurred by DEVELOPER for the design, engineering, installation and construction of the Improvements. DEVELOPER further agrees to maintain such records for a period of three (3) years after final payment under this Reimbursement Agreement.

12. ATTORNEY FEES & COSTS: In the event of the bringing of an 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 part its reasonable attorneys' fees (including in-house attorneys) and costs of suit.

13. NOTICES: All notices required shall be in writing and delivered in person or sent by United States mail, postage prepaid.

Notices to CITY shall be addressed as follows:

Director of Municipal Utilities
 City of Stockton
 2500 Navy Drive
 Stockton CA, 95206

Notices to DEVELOPER shall be addressed as follows:

H.D. ARNAIZ CORPORATION, Inc.
 Attn: Matt Arnaiz
 3400 East Eight Mile Road, Suite A
 Stockton, CA 95212

Provided that any party may change such address by notice in writing to the other party and, thereafter, notices shall be addressed and transmitted to the new address.

14. NOT PUBLIC WORKS: The parties hereto agree that this Reimbursement Agreement is for the acquisition of certain improvements by CITY, and is not, nor is it intended to be, a public works contract. In performing this Reimbursement 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 or for the payment of wages to any laborer who may work on the improvements being constructed and installed by DEVELOPER pursuant hereto.

15. PREVAILING WAGES: DEVELOPER shall pay, or cause to be paid, prevailing wages for all construction work required under this Reimbursement Agreement. For the purposes of this Reimbursement Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulation (Section 1600 et seq.), and as established by the Director of the California Department of Industrial Relations ("DIR) for the respective craft classification. In any case, the prevailing wage rate of per diem wages shall be adjusted annually in accordance with the established rate in effect as of such date.

DEVELOPER shall require the construction contractors and subcontractors working on the Improvements to complete and submit all prevailing wage compliance documentation to the CITY. Following commencement of construction, DEVELOPER shall further require the contractors and subcontractors to submit completed certified payroll records with each monthly pay request. The contractors and subcontractors working on the Improvements shall be required to: (1) grant the CITY access to the project site at reasonable times for the purposes of enforcing the provisions of this Section, (2) provide the CITY with documentation relating to compliance with this Section, and (3) indemnify and hold the CITY harmless from any costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages, including but not limited to, costs in investigation or conducting audits.

16. LOCAL EMPLOYMENT ORDINANCE: For contracts valued at \$100,000 and above, pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with Section 3.68.095.

17. COMMUNITY WORKFORCE TRAINING AGREEMENT: For contracts valued at 1,000,000 and above, pursuant to the implementation of the Community Workforce Training Agreement (CWTa) adopted by the City Council on July 26, 2016, the successful bidder shall be required to comply with the provisions of the CWTa. For any project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the project.

18. LOCAL PREFERENCE: Pursuant to Stockton Municipal Code Section 3.68.090 preference shall be given to the purchase of supplies, materials, equipment, and contractual services from local merchants, quality and price being equal. Local merchants who have a physical business location within the boundaries of San Joaquin County, and who have applied for and paid a business license tax and registration fee pursuant to Stockton Municipal Code Title 5, Chapter 5.08, License Taxes, shall be granted two (2) percent bid preference. Local merchants who have a physical business location within the boundaries of the City of Stockton Municipal Code Title 5, Chapter 5.08, License Taxes, shall be granted five (5) percent bid preference. This section is intended to provide preference in the award of certain City contracts in order to encourage businesses to move into and expand within the City.

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

20. APPLICABLE LAW: The provisions of this Reimbursement Agreement and any and all disputes arising there from shall be governed by the laws of the State of California.

21. SUCCESSORS & ASSIGNS: This Reimbursement Agreement shall bind and inure to the benefit of the parties and their respective successors, heirs, executors, administrators and assigns.

22. INTEGRATION CLAUSE: This Reimbursement Agreement represents the entire and integrated agreement between the parties regarding the matters set forth herein and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by the parties.

23. REQUIRED SIGNATURES: The undersigned represent and warrant that the individuals signing on their behalf are duly authorized to execute this Reimbursement Agreement and to bind the parties.

IN WITNESS HEREOF, the parties have caused this Reimbursement Agreement to be executed by their duly authorized representatives as of the date set forth above.

CITY OF STOCKTON

H.D. ARNAIZ CORPORATION,
INC.

By: _____
Harry Black, City Manager

By: _____
Matthew Arnaiz, Secretary

ATTEST:

City Clerk of the City of Stockton

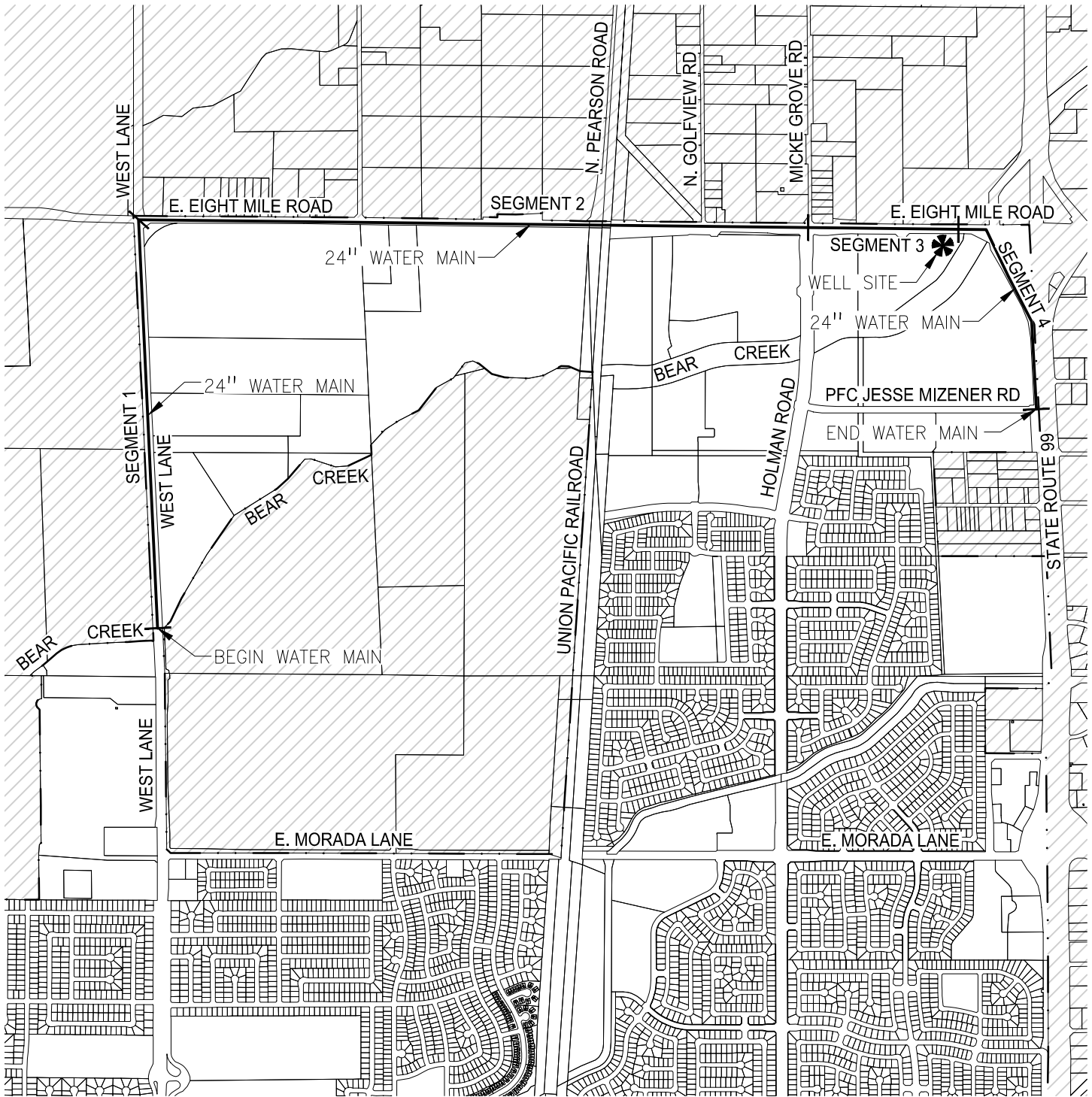
APPROVED AS TO FORM:

Lori M. Asuncion, City Attorney

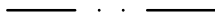




Exhibit A

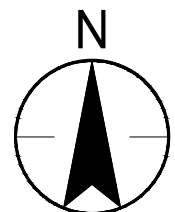
(Capital Improvements)

"EXHIBIT A"



LEGEND

-  STOCKTON CITY LIMITS
-  UNINCORPORATED (SAN JOAQUIN COUNTY)
-  EXISTING PROPERTY LINE
-  PROPOSED WATER MAIN
-  FUTURE WELL SITE



NOT TO SCALE

NOVEMBER, 2023

Exhibit B

(Estimated Improvement Cost)

H. D. ARNAIZ CORPORATION
NORTHEAST STOCKTON WATER TRANSMISSION MAIN
STOCKTON, CALIFORNIA
Preliminary Quantities Sheet
SEGMENTS 1-4 Project Summary

Description	Segment 1	Segment 2	Segment 3	Segment 4	Totals
SITE PREPARATION	\$ 141,025.00	\$ 41,700.00	\$ 45,750.00	\$ 119,900.00	\$ 348,375.00
WATER SYSTEM	\$ 2,932,750.00	\$ 3,552,900.00	\$ 722,700.00	\$ 1,723,200.00	\$ 8,931,550.00
STREET WORK	\$ 511,800.00	\$ 173,100.00	\$ 138,000.00	\$ 404,800.00	\$ 1,227,700.00
MISCELLANEOUS	\$ 175,000.00	\$ 215,000.00	\$ 105,000.00	\$ 125,000.00	\$ 620,000.00
ESTIMATED IMPROVEMENT COST	\$ 3,760,575.00	\$ 3,982,700.00	\$ 1,011,450.00	\$ 2,372,900.00	\$ 11,127,625.00
Contingency (20%)	\$ 752,115.00	\$ 796,540.00	\$ 202,290.00	\$ 474,580.00	\$ 2,225,525.00
Plan Check Fee (4%)	\$ 150,423.00	\$ 159,308.00	\$ 40,458.00	\$ 94,916.00	\$ 445,105.00
Inspeciton Fee (4.5%)	\$ 169,225.88	\$ 179,221.50	\$ 45,515.25	\$ 106,780.50	\$ 500,743.13
Construction Management (3%)	\$ 112,817.25	\$ 119,481.00	\$ 30,343.50	\$ 71,187.00	\$ 333,828.75
Construction Staking	\$ 15,000.00	\$ 20,000.00	\$ 12,000.00	\$ 15,000.00	\$ 62,000.00
Faithful Performance Bond (2%)	\$ 37,605.75	\$ 39,827.00	\$ 10,114.50	\$ 23,729.00	\$ 111,276.25
Labor and Material Bond (2%)	\$ 37,605.75	\$ 39,827.00	\$ 10,114.50	\$ 23,729.00	\$ 111,276.25
UPRR Crossing - Permitting/Observation	\$ -	\$ 100,000.00	\$ -	\$ -	\$ 100,000.00
Permitting/CEQA	\$ -	\$ -	\$ -	\$ 150,000.00	\$ 150,000.00
SUBTOTAL	\$ 1,274,792.63	\$ 1,454,204.50	\$ 350,835.75	\$ 959,921.50	\$ 4,039,754.38
TOTAL SEGMENT COST	\$ 5,035,367.63	\$ 5,436,904.50	\$ 1,362,285.75	\$ 3,332,821.50	\$ 15,167,379.38
DESIGN COST					\$ 650,000.00
TOTAL ESTIMATED REIMBURSEMENT					\$ 15,817,379.38

NOTES:

1. This Preliminary Quantities Sheet Is Based On Conceptual Plans for Northeast Stockton Water Transmisison Main Dated 9/01/2023. VVH Consulting Engineers Assumes No Liability for Changes Or Increases Required By Governing Agencies Or Utility Companies Which May Occur Upon Improvement Plan Approval.
2. Quantities Do Not Include Any Soft Costs Such As Architecture, Design, Engineering, Permits, Inspections, Consultants, Environmental Studies, Financing, Interest Payments, and Regulatory Demands Needing Approval Before Construction Begins.
3. Excavation, Bedding, And Backfill To Subgrade With Compaction Is Included In Items
4. Shoring Required To Trench And Construct Improvements Is Included In Items
5. Angle Bends Are Included In Price For Items #4-7 (Segments 1 And 2), Items #4-5 (Segments 3 And 4).
6. Thrust Blocks Or Restrained Joints Are Included In Items #4-7, #16 And #17 (Segment 1), Items #4-7 And #15 (Segment 2), Items #4, #5 And #11 (Segments 3 And 4).
7. Valve Box Included On Items #8-12 (Segment 1), Items #8-11 (Segment 2), Items #6-7 (Segments 3 And 4) Per COS Std. Dwg. W-19.
8. Quantities Assume Air Release Valves Spaced At 2,000 foot Increments Or Fractions Therof.
9. Quantities Assume Water Sampling Stations Spaced at 5,000 foot Increments Or Fractions Therof.
10. Unit Costs are based on the July 13, 2023 Teichert Construciton Rough Order of Magnitude Budget Bid.
11. Bear Creek - East Crossing is located at the SW corner of Eight Mile Road and West 99 Frontage.