

RESOLUTION NO. 2005-154

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING TEMPORARY STORM DRAINAGE BASIN
AGREEMENT FOR WESTGATE SHOPPING CENTER

WHEREAS, the parcels located at 333, 363, 425, and 515 South Lower Sacramento Road (APNs 027-400-05, 027-400-07, 027-400-08, and 027-400-09, respectively) and 2500 and 2650 West Lodi Avenue (APNs 027-400-06 and 027-400-04, respectively), as shown on Exhibit A attached, are collectively referred to as Westgate Shopping Center and were created by a parcel map filed on December 30, 2002, in Book 22 of Parcel Maps, on Page 124 in the Office of the San Joaquin County Recorder; and

WHEREAS, since the parcels are located in the area covered by the Westside Facilities Master Plan, dated January 26, 2001, and public storm drainage basin facilities included in the master plan have not yet been constructed, the developer/owner, Kristmont West, Inc., was required, as a condition of approval of the parcel map, to provide privately-owned and -maintained storm drainage facilities, including a temporary storm drainage basin, until public storm drainage facilities become available; and

WHEREAS, the use of a temporary, privately-owned and -maintained storm drainage basin to meet the storm drainage needs of the parcels, as well as the parcel located at 617 South Lower Sacramento Road (APN 027-400-10), had been previously approved by the City Council on January 16, 2002; and

WHEREAS, the temporary private storm drainage basin has subsequently been constructed in conjunction with Building Permit Nos. B09384 through B09387 issued for construction of a mini-storage facility at 2650 West Lodi Avenue; and

WHEREAS, under the terms of the Improvement Agreement for Public Improvements of 2650 West Lodi Avenue, approved by the City Council on June 2, 2004, for that project, the developer is required to enter into a separate agreement with the City covering the operation and maintenance of the temporary private storm drainage basin; and

WHEREAS, staff recommends that the City Council approve a Temporary Storm Drainage Basin Agreement, as shown on Exhibit B attached.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Temporary Storm Drainage Basin Agreement for Westgate Shopping Center; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes and directs the City Manager to execute the agreement on behalf of the City.

Dated: August 3, 2005

I hereby certify that Resolution No. 2005-154 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 3, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,
and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



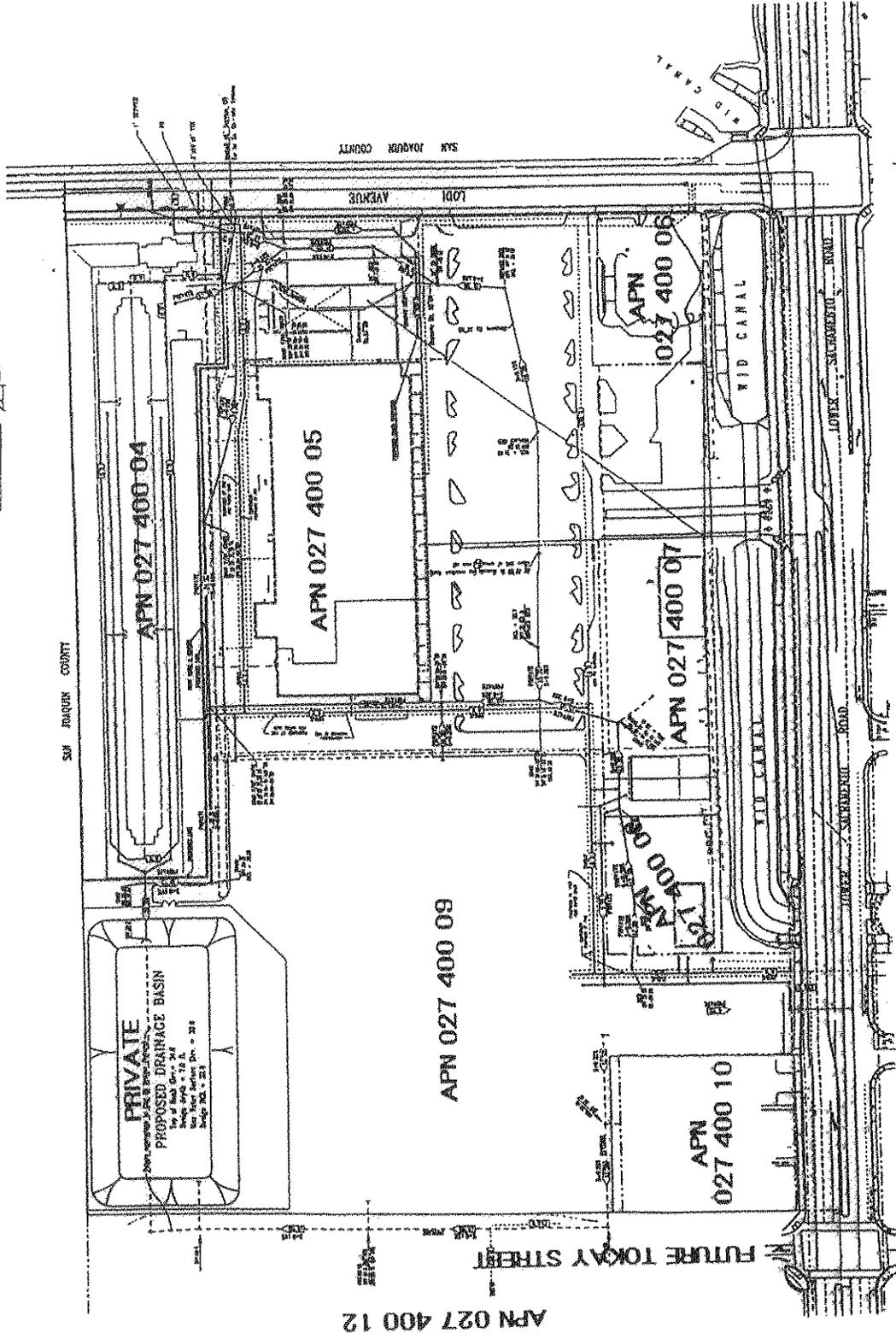
SUSAN J. BLACKSTON
City Clerk



CITY OF LODI
PUBLIC WORKS DEPARTMENT

EXHIBIT A

N.T.S.



WESTGATE SHOPPING CENTER

APN 027 400 12

EXHIBIT B

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

TEMPORARY STORM DRAINAGE BASIN AGREEMENT WESTGATE SHOPPING CENTER

APN 027-400-04
APN 027-400-05
APN 027-400-06
APN 027-400-07
APN 027-400-08
APN 027-400-09

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, a California municipal corporation, hereinafter "City", and KRISTMONT WEST, INC., a California corporation, hereinafter "Developer" (collectively the "Parties").

RECITALS:

WHEREAS, Developer is the owner of real property located at 333, 363, 425 and 515 S. Lower Sacramento Road (APN 027-400-05, 027-400-07, 027-400-08 and 027-400-09, respectively), and 2500 and 2650 W. Lodi Avenue (APN 027-400-06 and 027-400-04, respectively) (collectively the "Parcels"); and

WHEREAS, Developer filed a parcel map on December 30, 2002, in Book 22 of Parcel Maps, at Page 124 in the Office of the San Joaquin County Recorder, creating the Parcels from the existing parcel at 333 S. Lower Sacramento Road (formerly APN 027-040-04) known as Westgate Shopping Center; and

WHEREAS, public storm drainage facilities are not available to serve the Parcels and Developer is required, as a condition of approval of the Westgate Shopping Center parcel map, to provide privately owned and maintained storm drainage facilities, including a temporary storm drainage basin, until public storm drainage facilities become available to serve the Parcels; and

WHEREAS, the use of a temporary, privately owned and maintained storm drainage basin to meet the storm drainage needs of the Parcels, as well as the parcel located at 617 S. Lower Sacramento Road (APN 027-400-10), was approved by the City Council on January 16, 2002; and

WHEREAS, said temporary private storm drainage basin was constructed in conjunction with Building Permit Nos. B09384 through B09387 issued for construction of a mini-storage facility located at 2650 W. Lodi Avenue (APN 027-400-04); and

WHEREAS, said temporary private storm drainage basin has been constructed within the proposed future right-of-way required for the extension of Tokay Street and provisions need to be made for either the relocation of said basin or the realignment of the future extension of Tokay Street; and

WHEREAS, provisions need to be made for the ongoing maintenance, repair, replacement and ultimate removal of the private storm drain basin serving the Parcels;

NOW THEREFORE, the Parties agree as follows:

1. Those parcels known as 333, 363, 425, 515 and 617 S. Lower Sacramento Road (APN 027-400-05, 027-400-07, 027-400-08, 027-400-09 and 027-400-10, respectively), and 2500 and 2650 W. Lodi Avenue (APN 027-400-06 and 027-400-04, respectively), as shown on Exhibit A, comprise the entire drainage service area to be serviced by the relocated temporary storm drainage basin. Changes to the drainage service area or drainage basin configuration, if any, following execution of this Agreement require City Council approval.
2. In order to relocate the existing storm drainage basin outside of the future Tokay Street right-of-way and allow construction of full width street improvements at the time of extension of Tokay Street, Developer agrees to complete one of the alternatives listed below prior to September 15, 2005.
 - a) Prepare engineered plans for the removal and reconstruction the existing storm drainage basin outside of the future Tokay Street right-of-way, restore the ground within the street right-of-way to its original or better condition, and dedicate a street easement for the future Tokay Street extension, all to the approval of City's Public Works Department; or
 - b) Provide a written agreement between the Developer and the owner of the adjacent parcel to the south (APN 027-400-12) allowing the entire Tokay Street right-of-way to be located on Assessor's Parcel Number 027-400-12.

If Developer chooses alternative a) above, Developer shall provide on-site inspection by a licensed geotechnical engineer during all compaction and restoration operations within the future Tokay Street right-of-way. Developer shall submit to City a final compaction report from the geotechnical engineer stating that all work was performed in conformance with the geotechnical report for the project and containing all verified compaction test results. In addition, Developer's engineer shall submit the legal description for the street easement for the Tokay Street extension to the City. An easement deed will be prepared by City staff for execution by Developer.

If Developer pursues one of the above alternatives in a diligent manner and there are delays that are beyond Developer's control, Developer may submit a written request for an extension of the September 15, 2005 performance deadline to City's Public Works Director for approval. Approval of Developer's request for extension of the performance deadline will not be unreasonably withheld by the City's Public Works Director.

3. Developer shall operate and maintain the temporary private storm drainage basin at its sole cost and expense. Maintenance shall include, but is not limited to, dust control and the removal and disposal of accumulated silt, weeds and debris within the basin, and maintenance of fencing along the basin perimeter, all to the approval of City's Public Works Department. Should Developer fail to perform emergency maintenance or fail to perform other maintenance within two (2) days of written notice by the City, Developer shall reimburse the City for any expenses incurred by City in the performance of emergency or other maintenance on the temporary storm drainage basin due to Developer's failure to perform.

4. Developer shall provide City's Public Works Department with a key to the gate on the basin fence for emergency access to the basin. The Developer shall also post signs containing emergency contact information (names, phone numbers, etc.) on the fence.
5. Developer shall continue operation and maintenance of the temporary private storm drainage basin until a permanent public storm drainage facility is constructed and operational.
6. Within one hundred eighty (180) days after written notice from the City that public storm drainage facilities are available, Developer shall remove the temporary storm drainage basin, compact and restore the basin site to its original or better condition and connect the on-site private drainage facilities to the public storm drain system, all to the approval of City's Public Works Department.
7. Developer shall provide the City with a copy of an executed shared use, maintenance and operation agreement for all parties served by the temporary private storm drainage basin.
8. Developer agrees to save, defend, indemnify and hold harmless the City, its officers, elected and appointed officials, agents and employees, from liability for injury or damage of any nature to persons or property resulting from Developer's construction, use, operation and maintenance of the private storm drain basin.
9. This Agreement shall run with the land and be binding on the Developer, its officers, directors, shareholders, successors and assigns.
10. All correspondence to Developer shall be mailed to the following address:

Kristmont West, Inc.

7700 COLLEGE TOWN DR #111

SACRAMENTO CA 95826

Attention: MARK ENES

11. All correspondence to City shall be mailed to the following address:

Public Works Director
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

12. This Agreement constitutes the whole and only existing and binding agreement between the Parties hereto on the subject matter hereof, superseding all prior understandings, whether written or oral. Other than the representations expressly stated as such in this Agreement, there are no warranties, promises or representations of any kind, express or implied, upon which either Party has relied in entering into this Agreement, or as to the future relations or dealings of the Parties.
13. In the event either party to this Agreement breaches the terms, conditions and covenants of this Agreement, then, the prevailing party in any suit to enforce this Agreement or restrain the breach thereof, shall in addition to any other relief or damages awarded, be

entitled to reasonable attorney's fees and all costs of suit to be set and determined by a court of competent jurisdiction and added to any judgment obtained by the prevailing party.

- 14. The provisions of this Agreement shall be governed by the laws of the State of California, including any action arising out of this Agreement. Venue for any action arising out of this Agreement shall be with the San Joaquin County Superior Court.
- 15. This Agreement shall be recorded in the office of the San Joaquin County Recorder, P. O. Box 1968, Stockton, California, 95201-1968.
- 16. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she is a duly authorized representative of that entity with full power and authority to bind the entity to each term and condition thereof.
- 17. IN WITNESS WHEREOF, the undersigned acknowledge that they have read and understand the foregoing Agreement.

KRISTMONT WEST, INC.

JUNE 24, 2005
Dated

By: 
MARK ENES, PRESIDENT

By: _____

(CORPORATE SEAL)

CITY OF LODI, a Municipal Corporation

By: _____
Blair King, City Manager

Dated

ATTEST:

Susan J. Blackston, City Clerk

Dated

APPROVED AS TO FORM:

D. Stephen Schwabauer, City Attorney

By: _____
Janice D. Magdich, Deputy City Attorney

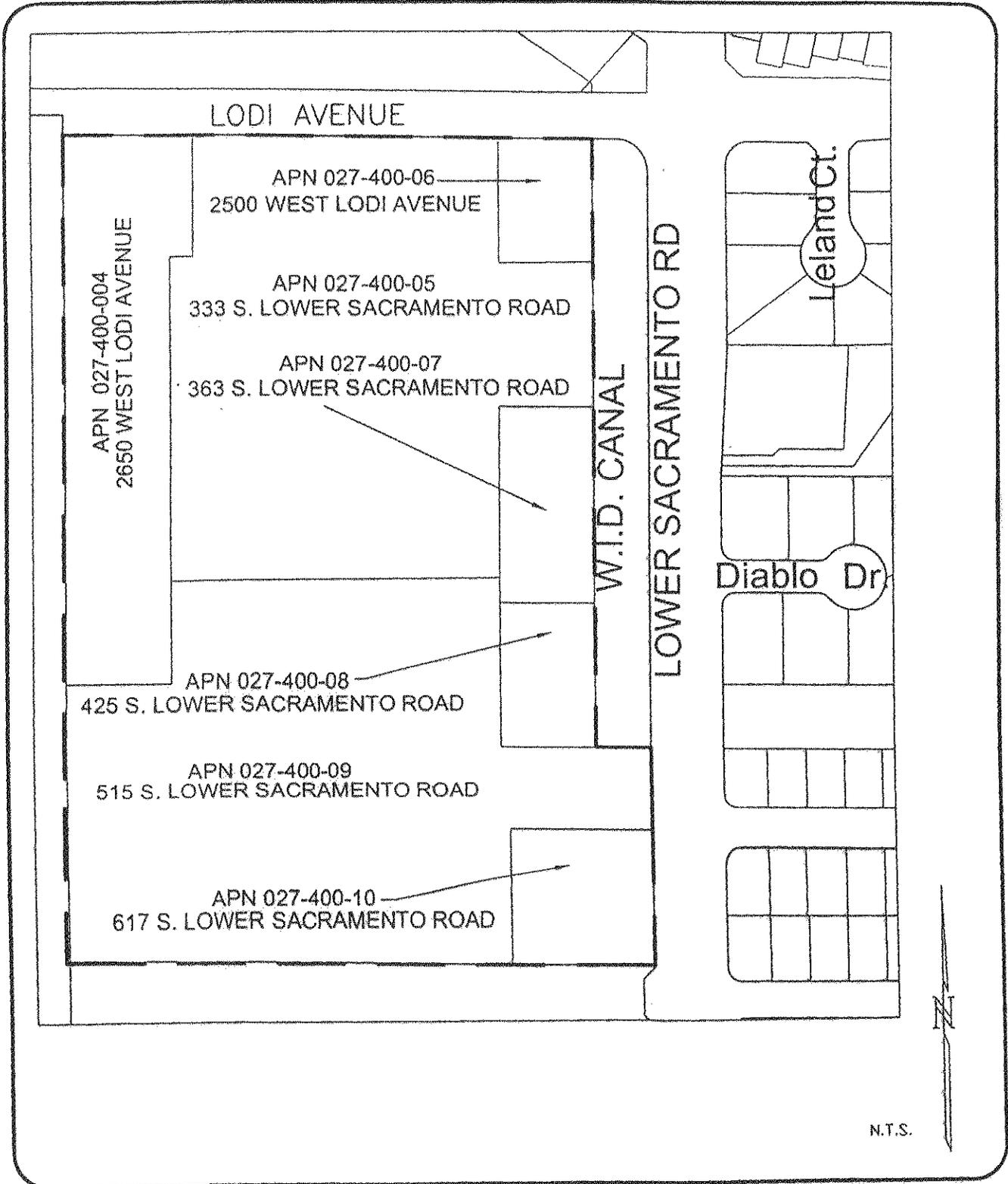


CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT A

DRAINAGE SERVICE AREA



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Sacramento } ss.

On 7-18-05 before me, Eric Richins
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)
personally appeared Mark Knott
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal
[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

