# Item No. 54

# "To Be Delivered" Material

**For**

## City of Sacramento

**City Council**
**Housing Authority**
**Redevelopment Agency**
**Economic Development Commission**
**Sacramento City Financing Authority**

## Agenda Packet

**Submitted:** February 24, 2006

## For the Meeting of: February 28, 2006 (afternoon)

The attached materials were not available at the time the Agenda Packet was prepared.

**Subject:** Agreement with Opus West Corporation regarding the Promenade at Natomas Planned Unit Development

Contact Information: Greg Bitter, Senior Planner, 808-7816
Development Services Department

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# REPORT TO COUNCIL
# City of Sacramento

**915 I Street, Sacramento, CA 95814-2671**
**www. CityofSacramento.org**

**CONSENT**
**February 28, 2006**

Honorable Mayor and
Members of the City Council

**Subject:** Agreement with Opus West Corporation regarding the Promenade at Natomas Planned Unit Development

**Location/Council District:** Promenade at Natomas, northeast of Truxel Road and Interstate 80. Council District 1.

**Recommendation:**

Staff recommends the City Council take the following action: 1) Approve the Resolution authorizing the City Manager to execute an Agreement with Opus West Corporation to fulfill a condition of the Promenade at Natomas Planned Unit Development (Resolution 2004-776).

**Contact:** Greg Bitter, Senior Planner, 808-7816, David Kwong, Interim Planning Manager, 808-2691
**Department:** Development Services Department
**Division:** Planning Division
**Organization No: 4875**

**Summary:**

This report requests Council approval of an agreement with Opus West Corporation in order to fulfill a condition placed on the Promenade at Natomas Planned Unit Development via Resolution 2004-776. The approval of the Promenade at Natomas Planned Unit Development included a condition requiring that prior to the issuance of the first certificate of occupancy of the first building onsite, the applicant will enter into an agreement with the City that shall include the following: i. A Corridor Analysis to coordinate and optimize signal timing on Truxel Road from San Juan Road to Del Paso Road will be performed to the satisfaction of the Department of Transportation; ii. The applicant shall provide communications equipment, junction boxes and fiber optic cabling from San Juan Road to Del Paso Road to the satisfaction of the Department of Transportation; iii. The applicant shall modify the traffic signals at the intersections of Truxel Road/Gateway Park Boulevard, Truxel Road/Arena Boulevard to provide all

facilities and appurtenances needed for CCTV cameras and then install said cameras to the satisfaction of the Department of Transportation; iv. The applicant shall provide for the planting of up to 100 trees along the Interstate 80 frontage in South Natomas on public property and other such land as designated in above mentioned agreement, and shall provide for a program for the watering of such trees for the first three years (non-irrigated); v. The applicant shall either construct or provide funding for the construction of a Regional Youth Baseball facility in South Natomas up to a cost of $1,000,000; vi. The applicant shall participate in a Jobs training/internship program with Natomas, Inderkum and Grant High Schools and with SETA for retail, food service, etc., to provide trained work force and applicant pool; vii. The applicant shall encourage tenants to be civic minded and contribute to area charities; viii. The applicant shall provide funding for a South Natomas shuttle equal to the North Natomas shuttle; and ix. The applicant shall provide for the paving of all park-n-ride spaces.

The attached agreement provides the terms by which this condition will be satisfied.

**Committee/Commission Action:**

None

**Background Information:**

On September 28, 2004, the City Council approved the Promenade at Natomas Project, which included approximately 663,200± square feet of retail uses, 108,000± square feet of hotel uses (two hotels with approximately 180± total rooms), 490,000± square feet of employment center uses, and 100,000± square feet of office uses.

One of the entitlements approved with this project was the establishment of the Promenade at Natomas Planned Unit Development (Resolution 2004-776). A condition of this resolution required the applicant to enter into an agreement with the City for the nine items outlined in the Summary Section of this report (see above).

**Financial Considerations:**

This agreement provides funding and/or services that will enhance transportation facilities, recreational facilities, transit service and landscaping in the City.

**Environmental Considerations:**

None

**Policy Considerations:**

Approval of this agreement and implementation of the terms will support several of the City of Sacramento Strategic Plan's Three-Year Goals. This agreement will; improve and expand public safety by improving several transportation facilities, help to achieve sustainability and livability by providing for enhanced landscaping, recreational facilities

and transit service, and expand economic development throughout the city by providing job training/internship programs.

**Emerging Small Business Development (ESBD):**

City Council approval of this resolution is not affected by City policy related to the ESBD Program. No goods or services are being purchased.

Respectfully Submitted by: _____
David Kwong
Interim Planning Manager

Approved by: _____
William Thomas
Director, Development Services

Recommendation Approved:

_____
RAY KERRIDGE
for Interim City Manager

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# RESOLUTION NO.

Adopted by the Sacramento City Council

February 28, 2006

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH OPUS WEST CORPORATION IN ORDER TO FULFILL CONDITION 2.E. OF THE RESOLUTION APPROVING THE ESTABLISHMENT OF THE PROMENADE AT NATOMAS PLANNED UNIT DEVELOPMENT (RESOLUTION 2004-776)**

## BACKGROUND

A. On September 28, 2004, the City Council approved the Promenade at Natomas Project (P00-033);

B. A condition of Resolution 2004-776, approving the establishment of the Promenade Planned Unit Development required an agreement requiring Opus West Corporation to provide certain benefits to the community.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. Authorize the City Manager to execute an Agreement, attached as Exhibit A, with the Opus West Corporation.

**Table of Contents**:

Exhibit A: Agreement with Opus West Corporation – 6 Pages

Adopted by the City of Sacramento City Council on February 28, 2006, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
Mayor Heather Fargo

Attest:

_____
Shirley Concolino, City Clerk

Exhibit A – Agreement with Opus West

AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
OPUS WEST, INC.
RELATIVE TO THE PROMENADE AT NATOMAS
PLANNED UNIT DEVELOPMENT ("PUD")

This AGREEMENT is entered into this _____ day of _____, 2006, by and between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and OPUS WEST, INC., a Minnesota Corporation ("DEVELOPER").

**RECITALS**

WHEREAS, DEVELOPER is developing a regional shopping center and office complex within the CITY known as Natomas Promenade; and

WHEREAS, on September 28, 2004, the City Council adopted Resolution 2004-776 creating the Promenade at Natomas Planned Unit Development ("PUD") ; and

WHEREAS, PUD condition 2.e. provides that:

e. Prior to the issuance of the first certificate of occupancy of the first building onsite, the applicant will enter into an agreement with the City that shall include the following:

i. A Corridor Analysis to coordinate and optimize signal timing on Truxel Road from San Juan Road to Del Paso Road will be performed to the satisfaction of the Department of Transportation.

ii. The applicant shall provide communications equipment, junction boxes and fiber optic cabling from San Juan Road to Del Paso Road to the satisfaction of the Department of Transportation.

iii. The applicant shall modify the traffic signals at the intersections of Truxel Road/Gateway Park Boulevard, Truxel Road/Arena Boulevard to provide all facilities and appurtenances needed for CCTV cameras and then install said cameras to the satisfaction of the Department of Transportation.

iv. The applicant shall provide for the planting of up to 100 trees along the Interstate 80 frontage in South Natomas on public property and other such land as designated in above mentioned agreement, and

shall provide for a program for the watering of such trees for the first three years (non-irrigated).

v. The applicant shall either construct or provide funding for the construction of a Regional Youth Baseball facility in South Natomas up to a cost of $1,000,000.

vi. The applicant shall participate in a Jobs training/internship program with Natomas, Inderkum and Grant High Schools and with SETA for retail, food service, etc., to provide trained work force and applicant pool.

vii. The applicant shall encourage tenants to be civic minded and contribute to area charities.

viii. The applicant shall provide funding for a South Natomas shuttle equal to the North Natomas shuttle.

ix. The applicant shall provide for the paving of all park-n-ride spaces.

WHEREAS, the CITY and DEVELOPER desire to enter into this Agreement to satisfy the requirements of Condition 2.e. of the PUD;

NOW THEREFORE, the CITY and DEVELOPER agree as follows:

## AGREEMENT

1. The Preamble and Recitals and all defined terms set forth above shall be incorporated within this Agreement.

2. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by CITY and DEVELOPER and that the DEVELOPER is not an agent of City. The CITY and DEVELOPER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the CITY and DEVELOPER joint venturers or partners.

3. The Parties hereby agree that Condition 2e of the PUD is satisfied by the terms of this Agreement.

4. The requirements of condition 2e of the PUD have been completed or shall be completed in the following manner:

a. Item i. DEVELOPER has contracted for a corridor analysis to coordinate and optimize signal timing on Truxel Road from San Juan Road to Del Paso Road. Such study is being coordinated with the Department of Transportation and will be provided to the Department upon completion to the Department's satisfaction.

b. Item ii. DEVELOPER shall pay CITY within thirty (30) days of executing this Agreement the sum of One Hundred Thousand Dollars ($100,000.00) in order for the CITY to provide communications equipment, junction boxes and fiber optic cabling from San Juan Road to Del Paso Road.

c. Item iii. DEVELOPER has included in its improvement plans and is currently modifying the traffic signals at the intersections of Truxel Road/Gateway Park Boulevard, Truxel Road/Arena Boulevard to provide all facilities and appurtenances needed for CCTV cameras and then install said cameras to the satisfaction of the Department of Transportation.

d. Item iv. Upon the CITY acquiring the land adjacent to the southeast section of the Truxel I-80 interchange, DEVELOPER shall provide for the planting of up to 100 trees along the Interstate 80 frontage on the public property and shall provide for a program for the watering of such trees for the first three years (non-irrigated). In the alternative, DEVELOPER may pay the CITY a SUM of $25,000 ($250 per tree) so that the CITY may plant and maintain or contract to plant and maintain such trees. Such plantings or fee shall be made prior to the issuance of an Occupancy Permit for the second office building within the PUD.

e. Item v. DEVELOPER shall provide construction services such as grading and/or construct facilities and improvements for the Regional Youth sports facility in South Natomas based upon a scope of work prepared by the City Parks and Recreation Department and agreed to by the City Parks and Recreation Department and DEVELOPER not to exceed a value of one million dollars ($1,000,000.00). Such services and construction shall commence within 90 days of a written request by the City Parks and Recreation Department, weather and conditions permitting, or prior to the issuance of an Occupancy Permit for the fourth office building within the PUD, whichever occurs first. In the alternative, DEVELOPER and the City Parks and Recreation Department may mutually agree the DEVELOPER pay the CITY for such construction services and facilities not to exceed a value of one million dollars ($1,000,000.00). In the event the payment option is selected, such payment shall be made within 90 days of the above referenced written request by the City Parks and Recreation Department.

f. Items vi and vii. DEVELOPER had recorded on June 28th, 2005, Declaration of Covenants, Conditions and Restrictions and Grant of Reciprocal

Easements of Promenade at Sacramento Gateway that apply to the entire PUD and include the following requirements:

1. "Contributions. Each Owner and Lessee is encouraged to be civic minded and contribute to area charities."
2. "Job Training. Each Owner and Lessee shall participate in a jobs training/internship program with Natomas, Inderkum and Grant High Schools and with SETA for retail, food service, etc. to provide trained work force and an applicant pool pursuant to Governmental City Requirements."

g. Item viii. DEVELOPER is subject to a Transportation Management Plan (TMP) that is a condition of approval for the PUD. The TMP provides that:

Funding for this shuttle service will follow the North Natomas TMA community shuttle fee structure, as approved by the TMA's Board of Directors. This fee structure will be included in the Promenade at Natomas CC&R's and will be implemented accordingly. These fees, which are due on an annual basis, are as follows:

- Office: $0.06 per building square foot
- Commercial: $0.10 per building square foot
- Industrial: $0.03 per building square foot
- Sports Complex: $200 per net acre

These shuttle fees are subject to annual adjustment using the Consumer Price Index (CPI), at a rate not to exceed five percent (5%). Promenade at Natomas tenant employers will begin paying the shuttle fees at the time their business begins. Opus-West will collect this fee and the North Natomas TMA will invoice Opus-West at the time of completion of each phase of development.

In addition, pursuant to City Resolution 2004-776, establishing the Promenade at Natomas Planned Unit Development, Opus-West will provide funding for shuttle service in the South Natomas community. Such funding shall be calculated using the same fee structure as that described in this paragraph, above.

In addition, DEVELOPER has included in the Master CC&Rs recorded on June 28th, 2005, requirements for the payment of such TMP fees as required in the TMP.

h. Item ix. On June 9, 2005, the City Planning Commission approved the Schematic Plan Amendment to depict the proposed project within the PUD

and approved a Special Permit to construct four office buildings. That action included conditions C9 and C10 that replaced item ix and now require that:

C9) Prior to the issuance of a Certificate of Occupancy for Office Buildings B, C, or D, whichever occurs first, the applicant shall install landscaping and irrigation, in consultation with Regional Transit staff, on the 350 space park-and-ride area. Such landscaping shall be maintained by the applicant until such time RT acquires the property.

C10) The applicant shall install a vertical curb around the Landscaped park-and-ride area.

5. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of the Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party hereto of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

7. Should any legal action be brought by either party for breach of the Agreement or the enforce any provisions herein, the prevailing party to such action shall be entitled to reasonable attorneys' fees; court costs and such other costs as may be fixed by the Court.

8. DEVELOPER shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by DEVELOPER and assumption by the assignee of such assignment in a form acceptable to CITY and the conveyance of DEVELOPER's interest in the Property related thereto, DEVELOPER shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "DEVELOPER," with all rights and obligations related thereto, with respect to such conveyed property, subject to the approval of the City Attorney, which shall not be unreasonably withheld.

9. This Agreement is made and entered into for the sole protection and benefit of the DEVELOPER and the CITY and their successors and assigns. No other person shall have any right of action based upon any provision in the Agreement.

10. The CITY at its discretion may record this agreement with the Sacramento County Recorder's Office.

11. This Agreement is subject to the approval by the Sacramento City Council.

IN WITNESS WHEREOF, the CITY and DEVELOPER have executed this Agreement as of the date first set forth above.

CITY:

By:_____
Ray Kerridge
City Manager

Approved as to Form

By:_____
_____
City Attorney

DEVELOPER:
OPUS WEST, INC.

By:_____
Donald L. Little
Senior Vice President