

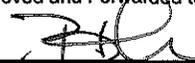


Agenda Date: 06/23/2015

Agenda Item: 3.3

STAFF REPORT

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Date: Tuesday, June 23, 2015
To: Bryan H. Montgomery, City Manager
From: Kevin Rohani, Public Works Director/City Engineer

SUBJECT: Subdivision Improvement Agreement with Brookfield Emerson Land LLC for Public Improvements (Parcel B, exterior to pond – Emerson Ranch Park) within Subdivision 9032

Background and Analysis

Brookfield Emerson Land LLC is required to develop certain public improvements to the approved Subdivision 9032, which includes public parks and landscape. The attached Subdivision Improvement Agreement (SIA) outlines the reasonable conditions and responsibilities of the Developer.

Brookfield Emerson Land LLC is responsible for the full cost of the Emerson Ranch Park construction. When the park has been completed and is in conformance with the approved plans and agreement, the parcel will be dedicated to the City for public use and accepted for maintenance.

Fiscal Impact

There is no fiscal impact associated to the City's budget with this action.

Staff Recommendation

Staff recommends that the City Council adopt the Resolution approving the Subdivision Improvement Agreement for Emerson Ranch Park within Subdivision 9032, and authorizing the City Manager to execute (sign) the Agreement.

Attachments

- 1) Resolution for Emerson Ranch Park
- 2) Agreement for Emerson Ranch Park

RESOLUTION NO. __-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING THE SUBDIVISION IMPROVEMENT AGREEMENT WITH BROOKFIELD EMERSON LAND LLC FOR EMERSON RANCH PARK WITHIN SUBDIVISION 9032

WHEREAS, the City Council of the City of Oakley, California wishes to enter into a Subdivision Improvement Agreement with Brookfield Emerson Land LLC for the development and faithful performance of public improvements for work known as Emerson Ranch Park, Parcel "B" (exterior to pond) within Emerson Ranch Subdivision 9032; and

WHEREAS, this agreement will require the developer to complete approximately \$1,499,808.00 in public improvements and drainage in accordance with the project conditions of approval and City standard construction design; and

WHEREAS, upon satisfactory completion of the work, the plant establishment period, and maintenance funding conditions are met, the park will be accepted by the City of Oakley for public maintenance.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that the Subdivision Improvement Agreement for Emerson Ranch Park within Subdivision 9032 with Brookfield Emerson Land LLC is hereby approved in the form attached hereto as Exhibit A and made part of this resolution and that the City Manager is hereby authorized to execute said agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 23rd of June, 2015 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

ATTEST:

Doug Hardcastle, Mayor

Libby Vreonis, City Clerk

Date

**CITY OF OAKLEY
SUBDIVISION IMPROVEMENT AGREEMENT
EMERSON RANCH PARK, EMERSON RANCH, SUBDIVISION 9032,
PARCEL "B", EXTERIOR TO POND**

This Agreement is made and entered into this 23rd day of June, 2015 by and between the City of Oakley, a municipal corporation, hereinafter referred to as "CITY", and Brookfield Emerson Land LLC, a Delaware Limited Liability Corporation, hereinafter referred to as "DEVELOPER".

RECITALS

WHEREAS, it has been determined by the City Council of the City of Oakley, State of California, that DEVELOPER desires to improve and dedicate Emerson Ranch Park (Parcel B, exterior to pond) of Subdivision 9032, (hereafter "The Improvements") required by the conditions of approval for Subdivision 9032 as approved by the City of Oakley City Council via Resolution Number 107-10, in accordance with the requirements and conditions set forth in approvals, the requirements of the Subdivision Map Act of the State of California, and those certain plans and specifications for said development approved by CITY and titled "Emerson Ranch Park Construction Documents" now on file in the office of the City Engineer, which are hereby referred to for a more definite and distinct description of the work to be performed under this Agreement as though set forth at length herein; and

WHEREAS, DEVELOPER intends to satisfactorily complete The Improvements within the time hereinafter specified, and CITY intends to accept DEVELOPER's offer(s) of dedication of The Improvements in consideration for DEVELOPER's satisfactory performance of the terms and conditions of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants herein contained, the parties agree as follows:

1. Improvements.

DEVELOPER agrees to install the park and landscaping improvements, signs, lighting, irrigation, benches, and such other improvements (including appurtenant equipment) as required by the conditions of approval for Subdivision 9032, as set forth in Exhibits A and B, respectively, to this Agreement, which Exhibits are incorporated herein as if set forth at this point, or as otherwise required in the encroachment ordinance, including without limitation all improvements. In the event that any provision of this Agreement conflicts with the provisions of the Exhibits, the provisions of the Exhibits shall prevail to the extent that the conflicting provision(s) in the Exhibits requires a greater or more extensive improvement or expenditure, or to the extent that that provision extends DEVELOPER's obligations over a greater period of time than the specific provision set forth herein. Such improvements shall also be made in conformance with the City of Oakley Municipal Code and Contra Costa County Ordinance Code as adopted and enforced by the City of Oakley.

DEVELOPER will commence construction of The Improvements within 30 days following the effective date of this Agreement. DEVELOPER shall complete said work not later than twelve (12) months following said date of commencement in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City of Oakley Municipal Code and Contra Costa County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the City Municipal Code or County Ordinance Code, the stricter requirements shall govern. It is understood that the City of Oakley was incorporated effective July 1, 1999, and as such continues to rely on certain laws, ordinances and design standards of the County of Contra Costa. References herein to the County Code or County Ordinance Code are understood to refer to such ordinances and codes as if adopted by the City of Oakley.

Time is of the essence in this Agreement. Upon completion and acceptance of work, DEVELOPER shall furnish CITY with a complete and reproducible set of final as-built plans of The Improvements, including any authorized modifications.

2. Estimated Cost of Improvements.

The estimated cost of constructing The Improvements required by this agreement as adjusted for inflation is agreed to be \$1,499,808.00 for Grading and Public Improvements. Said amount includes costs and reasonable expenses and fees which may be incurred in enforcing the obligation secured.

3. Bonds Furnished.

Concurrently with the execution of this Agreement, DEVELOPER shall furnish CITY with the following security in the forms specified in Government Code sections 66499.1 and 66499.2 or in a form satisfactory to the CITY Attorney if different from said Government Code forms:

- a. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that The Improvements will be satisfactorily completed. A minimum of one percent (1%) of the security shall be a cash deposit.
- b. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to fifty percent (50%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that DEVELOPER'S contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.

CITY shall be the sole indemnitee named on any instrument required by this Agreement. Any instrument or deposit required herein shall conform with the provisions of Chapter 5 of the Subdivision Map Act. DEVELOPER may request that portions or all of the bonds may be substituted by other parties in the event that portions or all of the Project is sold to other parties, and such substitution shall not be unreasonably withheld by CITY.

4. Prevailing Wage.

CITY has determined that construction of The Improvements falls within the definition of "public works" set forth in California Labor Code Section 1720. Subject to any amendments to Labor Code Section 1720 et seq., DEVELOPER shall comply with Labor Code Section 1720 et seq., shall comply with the provisions set forth in Exhibit B and shall ensure that any contractors and subcontractors comply with the provisions of Exhibit B. DEVELOPER shall waive, indemnify, hold harmless and defend CITY concerning any liability arising out of Labor Code Section 1720 et seq.

5. Insurance Required.

Concurrently with the execution hereof, DEVELOPER shall obtain or cause to be obtained and filed with the CITY, all insurance required in this paragraph and as set forth in Exhibit C, and such insurance shall have been approved by the Finance Director of CITY, or his designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, DEVELOPER's general contractor shall obtain or cause to be obtained and filed with the Finance Director, all insurance required under this paragraph and as set forth in Exhibit C, evidenced herein as Exhibit D, and such insurance shall have been approved by the Finance Director of CITY, as to form, amount and carrier. DEVELOPER shall not allow any contractor or subcontractor to commence work on this contract or subcontract until all insurance required for DEVELOPER and DEVELOPER's general contractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by CITY. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier. CITY acknowledges and agrees that DEVELOPER has provided to CITY the evidence of insurance required to be maintained under this Section 5 and such insurance has been previously approved by the Finance Director of CITY, as to form, amount and carrier.

6. Work Performance and Guarantee.

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DEVELOPER guarantees all work executed by DEVELOPER and/or DEVELOPER's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after initial acceptance of the entire work by CITY. DEVELOPER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to CITY. DEVELOPER further covenants and agrees that when defects in design, workmanship and materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the DEVELOPER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, DEVELOPER shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

7. Inspection of the Work.

DEVELOPER shall guarantee free access to CITY through its City Engineer and his designated representative for the safe and convenient inspection of the work throughout its construction. Said CITY representative shall have the authority to reject all materials and workmanship which are not in accordance with the plans and specifications, and all such materials and or work shall be removed promptly by DEVELOPER and replaced to the satisfaction of CITY without any expense to CITY in strict accordance with the improvement plans and specifications.

8. Agreement Assignment.

This Agreement shall not be assigned by DEVELOPER without the written consent of CITY.

9. Abandonment of Work.

Neither DEVELOPER nor any of DEVELOPER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of DEVELOPER's obligations under this Agreement.

If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if DEVELOPER should be adjudged as bankrupt, or should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed, or if DEVELOPER, or any of DEVELOPER's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the CITY through its Public Works Director may serve written notice on DEVELOPER and DEVELOPER's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of DEVELOPER.

In the event of any such notice of breach of this Agreement, DEVELOPER's surety shall have the duty to take over and complete The Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER and DEVELOPER's surety shall be liable to CITY for any damages and/or reasonable and documented excess costs occasioned by CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

Attn: Bryan Montgomery, City Manager
Kevin Rohani, Public Works Director/City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

Notices required to be given to DEVELOPER shall be addressed as follows:

Attn: Josh Roden
Brookfield Emerson Land LLC
500 La Gonda Way, Suite 100
Danville, CA 94526

Notices required to be given surety of DEVELOPER shall be addressed as follows:

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

Concurrently with the execution of this Agreement, DEVELOPER has executed and has caused to be acknowledged an abstract of this Agreement. DEVELOPER agrees CITY may record said abstract in the Official Records of Contra Costa County.

10. Use of Streets or Improvements.

At all times prior to the final acceptance of the work by CITY, the use of any or all streets and improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of DEVELOPER. The issuance of any building or occupancy permit by CITY for units located within the project shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such improvements by CITY. DEVELOPER agrees that CITY's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health and safety.

11. Safety Devices.

DEVELOPER shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the project site as may be necessary to prevent accidents to the public and damage to the property. DEVELOPER shall furnish, place, and maintain such lights as may be necessary for illuminating the said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such safety items as may be shown on the plans and included in the items of work) shall be removed from site of the work by the DEVELOPER, and the entire site left clean and orderly.

12. Acceptance of Work.

Upon notice of the completion of the work covered by this agreement, the delivery of a set of final as-built plans, and submittal of a warranty bond in the amount of 10% of the cost of improvements set forth in Section 2 to CITY by DEVELOPER, CITY, through its City Engineer or his designated representative, shall examine the work without delay, for conformity with said plans and specifications and this Agreement.

Under its plan to provide a financing mechanism to support the maintenance of the park and landscaping required by the subdivision conditions, the DEVELOPER and CITY formed a Community Facilities District. As a part of that process, the DEVELOPER and CITY agreed that the turnover of the park and landscaping assets related to the project, or portions thereof, would not occur until such time that the CITY determines the District is both receiving sufficient ongoing revenues for park and landscaping maintenance, and that it has sufficient reserve balances for the ongoing and periodic maintenance of the assets long-term. Furthermore, DEVELOPER agreed that if any of the assets were constructed in advance of meeting this requirement, then DEVELOPER agreed to maintain them until the funding conditions described are met.

When the City Engineer or his designated representative determines both, that the improvements were completed in conformity with the plans and specifications of this Agreement, and that the Community Facilities District is both sufficiently funded and receiving sufficient park and landscaping related revenues to maintain the assets long-term, as described, he shall, without unnecessary delay, recommend acceptance of the work to the City

Council and, upon such acceptance, shall notify DEVELOPER or his designated agents of such acceptance.

CITY reserves the right to not accept the work until all construction activities, including those related to building construction, within the project boundaries have been completed.

13. Patent and Copyright Costs.

In the event that said plans and specifications require the use of any material, process or publication which is subject to a duly registered patent or copyright, DEVELOPER shall be liable for, and shall indemnify CITY from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of said patented or copyrighted material, process or publication.

14. Alterations in Plans and Specifications.

Any alteration or alterations made in the plans and specifications which are a part of this Agreement or any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to said bonds hereby waive the provisions of Section 2819 of the Civil Code of the State of California.

15. Liability.

a. DEVELOPER Primarily Liable. DEVELOPER hereby warrants that the design and construction of The Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. DEVELOPER agrees to indemnify, defend, release, and save harmless CITY, and each of its elective and appointive boards, commissions, officers agents and employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description, directly or indirectly arising from an act or omission of DEVELOPER, its employees, agents, or independent contractors in connection with DEVELOPER'S actions and obligations hereunder; provided as follows:

1. That CITY does not, and shall not, waive any rights against DEVELOPER which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by CITY, or the deposit with CITY by DEVELOPER, of any of the insurance policies described in Paragraph 4 hereof.
2. That the aforesaid hold harmless agreement by DEVELOPER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied, or approved of plans and/or specifications for the project, or regardless of whether or not

such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

- b. Design Defect. If, in the opinion of the CITY, a design defect in the work of improvement becomes apparent during the course of construction, or within one (1) year following acceptance by the CITY of the improvements, and said design defect, in the opinion of the CITY, may substantially impair the public health and safety, DEVELOPER shall, upon order by the CITY, correct said design defect at his sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the CITY for the corrective work required.

- c. Litigation Expenses. In the event that legal action is instituted by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If CITY is the prevailing party, CITY shall also be entitled to recover its attorney's fees and costs in any action against DEVELOPER's surety on the bonds provided under paragraph 3.

16. Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate at Oakley, California, the day and year first above written.

APPROVED AS TO FORM:

CITY OF OAKLEY

Derek P. Cole, City Attorney

Bryan H. Montgomery, City Manager

ATTEST:

DEVELOPER
Brookfield Emerson Land LCC
a Delaware Limited Liability Company

Libby Vreonis, City Clerk

By: _____
Josh Roden, Authorized Agent

Exhibits:

- Exhibit A - City of Oakley, City Council, RESOLUTION 107-10;
Conditions of Approval of Tentative Map for Subdivision 9032
- Exhibit B - Prevailing Wage
- Exhibit C - Insurance Requirements
- Exhibit D - Verification of Required Insurance

EXHIBIT A

**CITY OF OAKLEY, CITY COUNCIL, RESOLUTION 107-10;
CONDITIONS OF APPROVAL**

RESOLUTION NO. 107-10

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING THE EMERSON PROPERTY PROJECT VESTING TENTATIVE SUBDIVISION MAP (9032) TO SUBDIVIDE APPROXIMATELY 140 ACRES INTO 578 SINGLE FAMILY LOTS, A 24 ACRE COMMERCIAL PARCEL, AND OTHER PARK, TRAILS, OPEN SPACE AND STORMWATER DETENTION POND PARCELS, AND DESIGN REVIEW APPROVAL OF THE HOMES AND COMMERCIAL DEVELOPMENT PLAN. THE PROJECT IS LOCATED ON THE NORTHWEST CORNER OF EAST CYPRESS ROAD AND SELLERS AVENUE (APN 037-192-026)

FINDINGS

WHEREAS, in February of 2007, the applicant filed an application for approval of the Emerson Property Project - Subd. 9032 ("Project"), which included requests for a rezone to P-1 District and approval of a PD Plan, approval of a vesting tentative map to subdivide 140 acres into 662 single family lots and one approximately 10.5 commercial site, and design review approval of the homes and commercial development plan; and

WHEREAS, on or about April of 2008, the applicant filed a revised vesting tentative map and made an additional request for a General Plan Amendment. The revised map included 578 single family lots and an approximately 23.74 acre commercial site; and

WHEREAS, the revised Project included applications for the following:

- A General Plan Amendment to designate approximately 24 acres of the site to the "Commercial" land use designation;
- A rezone to P-1 (Planned Development) District and approval of the Planned Development Plan;
- A Vesting Tentative Map ("VTM") 9032 to subdivide approximately 140 acres into a 24 acre commercial parcel, 578 single family residential parcels, and other parcels containing parks, trails, open space and a stormwater treatment facility; and
- Design review for the conceptual design and signage for the commercial site, housing plans and elevations, and conceptual landscaping throughout the development and in the adjacent right-of-way.

WHEREAS, on September 3, 2010, the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution. The Notice of Public Hearing was also posted at Oakley City Hall, Freedom High School, and at 204 2nd Street (City Annex); and

WHEREAS, on September 14, 2010, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as revised by the City Council during its deliberations; and

WHEREAS, at the September 14, 2010 public hearing, the City Council introduced the project's rezoning ordinance (P-1 District), which included modifications that affected the proposed vesting tentative map and design review packets, as follows:

- Deletion of 11 lots, lot numbers 530 – 540, located adjacent to the proposed park along "X" Street and "Y" Court. As a result, the project has a total of 567 residential lots; and
- Deletion of the apartment alternative as a permitted use and deletion of the apartment site plan and references in the PD Plan and Design Review packet, with allowance for the developer to bring the apartment alternative back to the City Council no sooner than March of 2013 for reconsideration.

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

WHEREAS, these Findings are based on the City's General Plan, the City's Zoning and Subdivision Ordinances, and the information submitted to the City Council at its September 14, 2010 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the Subdivision (hereafter the "Record").

WHEREAS, the City Council hereby makes the following factual findings regarding this application:

- A. The Environmental Impact Report (EIR) for the Emerson Property Project Subdivision 9032 was certified by the City Council on September 14, 2010. The vesting tentative map and design review applications were analyzed under the Project EIR;
- B. At its September 14, 2010 public hearing, the City Council approved a General Plan Amendment for the Project that increased the Commercial designation in the Dutch Slough area, and project site, from 12 acres to 24 acres;
- C. Also at its September 14, 2010 public hearing, the City Council introduced an ordinance to rezone the Project site from A-3 (Heavy Agriculture) District to P-1 (Planned Development) District; and

- D. The real property affected by this vesting tentative map is designated Single-Family Medium (SM), Single Family High (SH), Multi Family High (MH), and Commercial in the Oakley 2020 General Plan and zoned P-1 (Planned Development) District.

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above Findings and the entire Record, the City Council makes the following additional findings in support of the recommended approvals:

- A. Regarding the application requesting approval of a Vesting Tentative Map (Subd. 9032) to subdivide 140 acres into 567 lots, a 24 acre commercial parcel, and other park, trail, open space and stormwater detention pond parcels, the City Council finds that:

The proposed Vesting Tentative Map, together with the provisions of its design and improvements, is consistent with the Zoning Code, adopted P-1 District, as modified to be consistent with the applicable P-1 District PD Plan, and applicable General Plan land use designations, as approved by City Council for the Project, in that it allows for orderly residential development in a residential area, and commercial development in an adequately sized and dedicated commercial area that meets the General Plan density allowance and complies with all of the applicable regulations set forth in the project's P-1 District;

1. The site is physically suitable for the type of development in that the proposed Vesting Tentative Map meets all of the applicable development standards in the project's P-1 District, which contains development standards for residential and commercial development on the subject site. It is served by public streets, and it can be served by utilities;
2. The site is physically suitable for the proposed gross density of development at 4.1 dwelling units per gross acre, which, when combined with Gilbert Subdivision 9033's gross density, complies with the overall Dutch Slough maximum gross density of 4.4 dwelling units per acre. The increase in the commercial site's acreage and swap of approximately six acres from Gilbert to Emerson, per a memorandum of understanding, results in the Emerson gross density being slightly lower than the overall Dutch Slough range;
3. The proposed Vesting Tentative Map and all identified mitigation measures have been incorporated into Project EIR and Mitigation and Monitoring Plan, prepared in accordance with the CEQA Guidelines, which was certified by the City Council on September 14, 2010;
4. The design of the subdivision and type of improvements are not likely to cause serious public health problems in that the proposed subdivision consists of 567 single-family residential lots, 24 acre commercial site and associated improvements, configured in a rectangular manner.

Construction and grading are subject to building or grading permits, and violations of any such permits are subject to appropriate enforcement;

5. The design of the subdivision includes the construction of improvements within the right-of-way that are consistent with major subdivisions and the City's design standards. The improvements consist of roads, sidewalks, curbs and gutters; and
6. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision. The Vesting Tentative Map does not conflict with easements acquired by the public for access and utilities.

B. Regarding the application for Design Review approval of the proposed house floor plans and architectural designs, and conceptual commercial development plan and architectural design, the City Council finds as follows:

1. The proposed house floor plans and architectural designs comply with the Oakley Residential Design Guidelines and provide for a quality project in that:
 - a. The proposed house floor plans offer recessed or side loaded garages, thereby de-emphasizing the garage door presence on the street;
 - b. Front facade materials, such as wood siding and window trim are used on all four elevations;
 - c. Roof forms and materials are relevant to the architectural style on which they sit. Roof styles include flat and shape concrete tile, wood shingle concrete tile, and architectural grade composition shingle; The architecture incorporates a variety of floor plans, building mass sizes and heights, and color schemes; and
 - d. Architectural elements such as wainscot and brick façade are used on appropriate elevation styles.

2. The proposed conceptual commercial development plan and architectural design complies with the Oakley Commercial and Industrial Design Guidelines and provides for a quality project in that:
 - a. The corner of East Cypress Road and Sellers Avenue is lined with two building pads and an outdoor plaza area, creating a focal point for the development;
 - b. Larger buildings are shown further back from the main streets, with ample setbacks to the adjacent property lines;
 - c. Pedestrian connections to the commercial area from the adjacent residential area are planned at the northwest corner, near the park and stormwater pond;
 - d. Architecturally the buildings provide a rustic, rural feel, similar to old farm or dairy buildings. Some corner elements of medium and small retail buildings simulate a metal silo;
 - e. A mix of stucco and wood siding compliments the residential architectural styles, but does not mimic them; and
 - f. Various wall elements, such as awnings, lattice and faux barn doors help to break up otherwise large, blank "canvases" of some buildings.

C. The Project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the foregoing Findings and the entire Record, the City Council take the following actions:

- A. A Vesting Tentative Map ("VTM") 9032 to subdivide approximately 140 acres into a 24 acre commercial parcel, 567 single family residential parcels, and other parcels containing parks, trails, open space and a stormwater treatment facility; and
- B. Design review for the residential architecture and conceptual design review for the commercial center.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves the applicant's request for approval of Vesting Tentative Map 9032 design review approval, subject to the following conditions:

Conditions of Approval

- A. Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the plans received by the Community Development

Department and made a part of the City Council's meeting packet for September 14, 2010.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. The applicant shall modify the Vesting Tentative Map, other related maps, and the Design Review packets to be consistent with the modification adopted as part of the Project's P-1 District PD Plan approval, including removal of 11 lots adjacent to the proposed park. The applicant shall submit a modified map and design review packets to the Community Development Department for the project file.
2. The Vesting Tentative Map and Design Review, stamped approved September 14, 2010 shall be implemented, as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.
3. The Vesting Tentative Map approval shall be valid for a period of three (3) years from the effective date of this resolution by recording a final map. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Municipal Code. The Design Review approval shall run concurrently with the tentative map approval.
4. All construction drawings submitted for plan check shall be in substantial compliance with the plans presented to and approved by the City Council in conjunction with this resolution and as a part of the Project's adopted PD Plan.
5. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
6. The applicant shall implement all applicable mitigation measures as adopted in the certified Emerson Property Environmental Impact Report/Mitigation and Monitoring Program.
7. The applicant shall participate in the East Contra Costa County Habitat Conservation Plan and pay any applicable fee as required per the MOA between the developers and the Habitat Conservation Plan Association.
8. The applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City

from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court.

Development Standards:

9. The Planned Development (P-1) zone district shall have the following standards:

Neighborhood 1 (60' x 100' Typical)

- Minimum lot area: 6,000 square feet;
- Minimum lot frontage: 60' at the front property line;
- Minimum front yard setback: 20' to garage, 20' to any living space, 15' to any porches, and 15' to side loaded garages, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10';
- Projections subject to OMC 9.1.1122(g);
- Minimum rear yard: 15'.

Neighborhood 2 (48' & 52' & 57' x 100' Typical)

- Minimum lot area: 4,800 square feet;
- Minimum lot frontage: 48' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space, 10' to any porches, and 15' to side loaded garages, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10';
- Projections subject to OMC 9.1.1122(g);
- Minimum rear yard: 15'.

Neighborhood 3 (43' & 45' & 47' & 52' x 85' Typical)

- Minimum lot area: 3,655 square feet;
- Minimum lot frontage: 43' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space or side loaded garage, and 10' to any porches, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10';
- Projections subject to OMC 9.1.1122(g);
- Minimum rear yard: 15'.

Neighborhood 4 (40' & 45' & 50' & 55' x 90' Typical)

- Minimum lot area: 3,600 square feet;
- Minimum lot frontage: 40' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space, side loaded garage, and 10' to any porches, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10';

- Projections subject to OMC 9.1.1122(g);
- Minimum rear yard: 15'.

Neighborhood 5 (Z-Lots Typical)

- Minimum lot area: 3,350 square feet;
- Minimum lot frontage: 34' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to side loaded garage, 15' to any living space, and 5' to any porches, all measured perpendicular to the structure;
- Minimum side yard setback: 3' minimum for interior zippers, 5' minimum for interior typical side, sum of both sides 8', corner lots shall maintain a street side yard setback of 10';
- Projections subject to OMC 9.1.1122(g);
- Minimum rear yard: 5' to Garage & 15' to Living Only.

All Neighborhoods

- Any lot with a front lot line where at least 50% of its length is concave, shall have a minimum lot frontage equal to half of the applicable neighborhood's minimum lot frontage (i.e. A lot in Neighborhood 1 is in the back of a cul-de-sac and its entire front lot line is concave. The minimum length of that lot frontage would be 30', rather than 60')
- The lot frontage for any corner lot, where the front and/or side yard lot lines are angled before intersecting, will be measured from the interior side and front lot line intersection to a point where the front and corner side lot lines would intersect if one or both were not angled.

Parks and Landscaping:

10. This project is subject to the Quimby Act and has a parkland requirement of five acres per 1,000 residents. The City General Plan establishes an average person per household of 3.21. The total amount of parkland, parkland in-lieu fees, or a combination of parkland and in-lieu fees will be established depending on the total number of approved housing units. As shown on the proposed vesting tentative map, the applicant has proposed a neighborhood park, located generally in the middle of the development, and a trail, located along the northern levee of the project. For park credits, the applicant will receive full credit for all final acreage located within the neighborhood park, and one-half credit for all acreage located within the trail ("Parcel A" on the VTM). The applicant shall pay in-lieu fees, subject to the City's parkland dedication and improvement impact fee, for any remainder parkland not constructed as part of the project.
11. The applicant shall work with the Community Development Department on the design, construction and completion of the park concurrent with the development of the subdivision. As part of the plan check process for the project, the applicant shall develop a park construction schedule approved by the Community Development Director to provide for the timely completion of the park concurrent with development.

12. A mix of evergreen and deciduous trees as well as shrubs and ground cover shall be planted along the street frontage as specified in the Residential Design Guidelines per the review and approval of the Community Development Director.
13. A landscaping and irrigation plan for all areas shown on the landscape plan shall be submitted, in phases as applicable, for review and approval of the Community Development Director prior to the issuance of building permits. Landscaping shall conform to the Oakley Landscape Guidelines and the City's Water Conservation Landscape Ordinance 82-26 and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance.
14. All landscaping shall comply with the City of Oakley water Efficient Landscape Ordinance.
15. All landscaped areas not covered by shrubs or groundcover shall be covered with bark or acceptable alternative as reviewed and approved by the Community Development Director. On slopes greater than 3 to 1, the applicant shall use an alternative to bark per the review and approval of the Community Development Director.
16. Each residential lot shall have a minimum number of trees along the street frontage, as indicated below:
 - Neighborhood 1 - Minimum of two trees, except corner lots shall have a minimum of four trees.
 - Neighborhoods 2, 3, and 4 – Minimum of two trees, except corner lots shall have a minimum of three trees.
 - Neighborhood 5 – Minimum of one tree, except corner lots shall have a minimum of three trees.

The installed location of the trees shall be in substantial compliance with the Front Yard Preliminary Landscape Plans as shown in the approved "Residential Architecture – Neighborhoods 1-5" approved by City Council and in conjunction with this Design Review approval.

17. The applicant shall install front yard landscaping on all residential lots per the Residential Design Guidelines and City of Oakley Water Efficient Landscape Ordinance, unless otherwise modified herein. The applicant shall maintain all private landscaping until occupancy.
18. A street tree plan shall be submitted for review prior to issuance of residential Building Permits (by phase as applicable). The street trees shall be inter-mixed throughout the subdivision, so there are a variety of trees on every street, per review of the Community Development Department.

19. The landscape plan along the levees shall be revised to ensure no trees or incompatible plant materials are planted within the levee prism per the approval of the Community Development Director and City Engineer.
20. Parcels C, D, E, F, G, I, J, and K, as shown on the Vesting Tentative Map stamped approved September 14, 2010, shall be fully landscaped with trees, shrubs and ground cover per the review and approval of the Community Development Director.
21. The commercial parcel shall be fully landscaped with trees, shrubs and ground cover per a landscape plan, subject to the review and approval of the Community Development Director prior to issuance of building permits for that parcel.

Fences and Walls:

22. Within the subdivision good neighbor fences shall be constructed of six-foot high wood fences with metal posts or acceptable alternative as reviewed and approved by the Community Development Director. Corner lots facing a street shall provide an enhanced wood fence with one foot of lattice along the top.
23. Fences that adjoin the trail system adjacent to the CCWD canal shall be constructed to provide for greater durability and enhanced appearance and consistent with the fencing extending from the Cypress Grove subdivision, per the review and approval of the Contra Costa Water District, as applicable.
24. A masonry wall, as shown in the Residential Architecture plans approved by City Council and in conjunction with this Design Review, shall be located along the Cypress Road residential area frontage and residential areas immediately adjacent to the commercial uses, per the acoustical analysis. A wall/berm combination may be provided to achieve the height requirement. The wall shall be of pre-cast concrete construction per the review and approval of the Community Development Director. In the locations where cul de sacs or front loaded streets are adjacent to Cypress Road, wrought iron or 42" picket fences shall be constructed to provide open views per the review and approval of the Community Development Director.
25. Anti-graffiti techniques and/or materials shall be used on sound walls (e.g., split-face CMU, and/or wall planting & other landscaping).

Subdivision Design:

26. Driveway openings shall be a maximum 18' in width or up to 25% of a lot's frontage (except on cul de sacs), whichever is more.
27. The street names shall be approved by the Community Development Department and the Fire District.

28. A life saving device shall be provided along the trail adjacent to the storm water pond to provide assistance for a drowning victim.

Subdivision Disclosures:

29. Where a lot/parcel is located within 300' of a high voltage electric transmission line, the applicant shall record the following notice:

"The subject property is located near a high voltage electric transmission line. Purchasers should be aware that there is ongoing research on possible potential adverse health effects caused by the exposure to a magnetic field generated by high voltage lines. Although much more research is needed before the question of whether magnetic fields actually cause adverse health effects can be resolved, the basis for such a hypothesis is established. At this time no risk assessment has been made."

When a Final Subdivision Public Report issued by the California Department of Real Estate is required, the applicant shall also request that the Department of Real Estate insert the above note in the report, as may be applicable to any HOA formation.

30. The following statements shall be recorded at the County Recorder's Office for each parcel to notify future owners of the parcels that they own property in an agricultural area:

"This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust or blowing sand; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment such as zone guns and aerial crop dusting and certain animals, including equestrian trails as well as flies may exist on surrounding properties. This statement is again, notification that this is part of the agricultural way of life in the open space areas of the City of Oakley and you should be fully aware of this at the time of purchase."

Design Review:

31. The homes and floor plans shall be consistent with those approved in the design review packet and PD Plan approved by City Council and stamped approved September 14, 2010. Any subsequent change to the floor plans or architecture of the homes shall be subject to City Council review and approval.

32. All windows shall be trimmed on all four sides.

33. Garage doors that face the street shall include windows as an option to future buyers.

Energy Efficiency:

34. Water heaters shall provide an energy efficiency factor of 0.84 or better.

35. Air conditioning condenser units shall be located to take advantage of natural shade, where feasible without interfering with practical use of yard space. Condensers should not be placed on the west or south elevation of a home, unless shade is provided. The location of the condenser shall be added to all plot plans for review and approval of the Community Development Director. Condensers located in side yards shall allow for a minimum of three feet (3') of clearance between condenser and either the house or fence.

36. Subdivisions design should take into consideration passive solar energy and house orientation should take advantage of this.

37. High efficiency furnaces in compliance with UBC Title 24 Codes.

Tree Permit

38. The applicant is approved to remove 69 onsite and 15 offsite trees as shown on the tree removal plan, and shall replace them with street trees and ornamental landscape trees, in substantial compliance with the Preliminary Landscape Plans approved as part of the PD Plan, per review by the Community Development Director.

Building Division Conditions

39. Plans shall meet the currently adopted Uniform Codes as well as the newest T-24 Energy Requirements per the State of California Energy Commission. To confirm the most recent adopted codes please contact the Building Division at (925) 625 – 7005.

40. An Automatic Life Safety Sprinkler System shall be required in all new residential occupancies pursuant to Ordinance 22-06.

41. Prior to requesting a Final Inspection from the Building Division all Conditions of Approval required for occupancy must be completed.

Public Works and Engineering Conditions

General:

42. Submit improvement plans prepared by a registered civil engineer to the City Engineer for review and approval and pay the appropriate processing costs in accordance with the Municipal Code and these conditions of approval. The plans shall be consistent with the Stormwater Control Plan for the project, include the drawings and specifications necessary to implement the required stormwater control measures, and be accompanied by a Construction Plan C.3 Checklist as described in the Stormwater C.3 Guidebook.
43. Submit a final map prepared by a licensed land surveyor or qualified registered civil engineer to the City Engineer and pay appropriate fees in accordance with the Code and these conditions of approval. Final Maps may be phased for separate neighborhoods, commercial parcel(s), and apartment parcel(s), and on or off-site improvements may be phased as applicable to match the development allowed by each Final Map at the discretion of the City Engineer. Up to ten phased Final Maps may be filed.
44. Submit grading plans including erosion control measures and revegetation plans prepared by a registered civil engineer to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval. The Grading Plan may be phased to coincide with on or off-site improvements as applicable, at the discretion of the City Engineer. Grading plans may be issued prior approval of improvement plans, at the discretion of the City Engineer.
45. Submit landscaping plans for publicly maintained landscaping by phased neighborhood, commercial parcel(s), and apartment parcel(s), including planting and irrigation details, as prepared by a licensed landscape architect to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
46. Execute any agreements required by the Stormwater Control Plan which pertain to any temporary easements, transfer of ownership and/or long term maintenance of stormwater treatment mechanisms required by the plan prior to the final inspection of the first house, apartment, or commercial building within the subdivision, or within each phase as applicable. Any temporary storm drainage ponds shall comply with the safety margins noted in EIR technical analyses, at the discretion of the City Engineer.
47. Building permits for house construction shall not be issued until the subdivision streets serving the lots have been paved.

Roadway Improvements:

48. Submit a phasing plan for roadway and infrastructure improvements to the City Engineer for approval if the project is being phased. It is anticipated that the Cypress Road and Seller Avenue improvements described in the following conditions will be phased to coincide with the phasing of the commercial and residential components of the project.

49. Construct the frontage of Cypress Road to City public road standards for a 40-foot half width roadway within a 65-foot half width right of way, including curb, eight-foot detached sidewalk (meandering within the landscape area so that the minimum landscape width is no less than six feet), right of way landscaping, necessary longitudinal and transverse drainage, pavement widening, and conforms to existing improvements. The face of curb shall be located 40 feet from the centerline and any conforms to existing improvements must take place outside of the limits of the project. The resulting cross section, including new and existing pavement, shall provide a minimum of two west bound 12 foot travel lanes, one east bound 12 foot travel lane, and associated turn lanes in accordance with the traffic analysis and City Engineer. The improvements are intended to be generally consistent with the "Emerson Ranch Project Frontage Improvements" exhibit prepared by Carlson, Barbee and Gibson, Inc. and dated April 28, 2010. The improvements may require slurry sealing and/or striping modifications as determined by the City Engineer to result in a safe and logical road segment. Ten feet of the west bound travel lanes (adjacent to the striped median) is eligible for reimbursement from the City's Traffic Impact Fee Program subject to a future reimbursement agreement. The agreement must be approved by the City Council prior to approving the final map for the costs to be reimbursable.

50. Construct the frontage of Sellers Avenue to City public road standards for a 40-foot half width roadway within a 70-foot half width right of way, including curb, eight-foot detached sidewalk (meandering within the landscape area so that the minimum landscape width is no less than six feet), right of way landscaping, necessary longitudinal and transverse drainage, pavement widening, and conforms to existing improvements. The face of curb shall be located 40 feet from the centerline and any conforms to existing improvements must take place outside of the limits of the project. The resulting cross section, including new and existing pavement, shall provide a minimum of one north bound 12 foot travel lane, one south bound 12 foot travel lane, and associated turn lanes in accordance with the traffic analysis and City Engineer. The improvements are intended to be generally consistent with the "Emerson Ranch Project Frontage Improvements" exhibit prepared by Carlson, Barbee and Gibson, Inc. and dated April 28, 2010. The improvements may require slurry sealing and/or striping modifications as determined by the City Engineer to result in a safe and logical road segment. New pavement in excess of twenty feet as measured from the face of curb to the east that will be used as part of the ultimate roadway may be eligible for reimbursement from the City's Traffic Impact Fee Program subject to

a future reimbursement agreement. The agreement must be approved by the City Council prior to approving the final map for the costs to be reimbursable.

51. Construct the bus stop along the north side of Cypress Road consistent with EIR Mitigation Measure 4.3-6. The bus stop shall be consistent with Tri Delta Transit and City standards and shall include any necessary shelters and appurtenances. The right of way adjacent to the bus stop shall be widened so that the landscaping widths are consistent with the remainder of the frontage. The bus stop structure shall be built prior to issuance of the certificate of occupancy for the first commercial (retail or office) or multi-family apartment building.
52. Construct the project streets to City public road standards and as shown on the approved Tentative Map with the following exceptions:
 - A. The minimum street grade may be lowered from the standard 1% to 0.75% provided that the project proponent demonstrates that the City's drainage standards can be achieved.
 - B. Submit a turning radius exhibit to the City Engineer for review and approval to illustrate that the ninety-degree turns of project streets can accommodate the largest expected vehicle to use the streets without the inclusion of City standard elbows. If the exhibit illustrates that elbows are necessary to accommodate the expected traffic then they shall be included in the improvement plans.
53. Install traffic signals at the following locations. The phasing, design and construction of the signals is subject to the review and approval of the City Engineer and may be based on additional traffic analysis to verify that traffic signal warrants have been met. The traffic signals shall be interconnected where appropriate. When placement of curb returns, poles and equipment is not feasible at the ultimate location the improvements will not be eligible for Traffic Impact Fee (TIF) credits (however portions of signals that are consistent with the ultimate design and locations may be eligible for fee credits).
 - A. Cypress Road at Sellers Avenue (this project is on the TIF project list and is eligible for reimbursement based on the policies and procedures of that program);
 - B. Cypress Road at A Street/Machado Lane (this project is not on the TIF project list and is not eligible for reimbursement); and
 - C. Cypress Road at Shopping Center Main Driveway (this project is not on the TIF project list and is not eligible for reimbursement).
54. Install traffic calming measures consistent with the City's Neighborhood Traffic Management Program including raised intersections or crosswalks on L Street at N Street and P Street, raised intersections or crosswalks, bulb outs, or traffic circles on Shearwater Way and Ibis Drive, and a raised crosswalk or other pedestrian safety feature from the park/stormwater pond area to the commercial

site. The traffic calming measures shall be included on the improvement plans and are subject to the review and approval of the City Engineer.

55. Install traffic control devices such as stop signs and other signing and striping on the project streets to the satisfaction of the City Engineer.
56. Design all public and private pedestrian facilities in accordance with Title 24 (Handicap Access) and the Americans with Disabilities Act.
57. Submit a phasing plan for the project streets to the City Engineer for review if the street improvements will be phased. The plan shall include provisions for emergency vehicle access, temporary turn-around facilities, and access to the occupied lots.

Road Alignment/Sight Distance:

58. Submit a preliminary plan and profile to the City Engineer for review showing all required improvements to Cypress Road and Sellers Avenue. The sketch plan shall be to scale, show horizontal and vertical alignments, transitions, curb lines, lane striping and cross sections and shall provide sight distance for a design speed of 45 miles per hour. The plan shall extend a minimum of 150 feet ± beyond the limits of the proposed work.

Road Dedications:

59. Convey to the City, by Offer of Dedication, the right of way for the project streets.
60. Convey to the City, by offer of dedication, the right of way for Cypress Road for the planned ultimate half width of 65-feet along the project frontage.
61. Convey to the City, by offer of dedication, the right of way for Sellers Avenue for the planned ultimate half width of 70-feet along the project frontage.
62. Relinquish abutter's rights of access along all non-primary frontages to the satisfaction of the City Engineer.
63. Furnish necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road, utility and drainage improvements.

Street Lights:

64. Install streetlights along all project streets and the project Cypress Road and Sellers Avenue frontage. The City Engineer shall determine the final number and location of the lights, and the lights shall be on an LS2-A rate service. The lights on the project streets shall be decorative per City standards, and the lights along

Cypress Road and Sellers Avenue shall be General Electric spun aluminum "cobra head" style

Grading:

65. Submit a geotechnical report to the City Engineer for review that substantiates the design features incorporated into the subdivision including, but not limited to grading activities, compaction requirements, utility construction, slopes, retaining walls, levees, and roadway sections.
66. At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 300 feet of the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be kept current at all times and shall consist of persons with authority to indicate and implement corrective action in their area of responsibility. The names of the individual responsible for noise and litter control shall be expressly identified in the notice. The notice shall be reissued with each phase of major grading activity. A copy of the notice shall be concurrently transmitted to the City Engineer. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.
67. Dust control measures shall be provided for all stockpiling per the review and approval of the City Engineer.
68. Grade all pads so that they drain directly to the public street at a minimum of one percent without the use of private drainage systems through rear and side yards.
69. Grade slopes with a vertical height of four feet or more at a slope of 3 to 1. Retaining walls that may be installed to reduce the slope must be masonry and comply with the City's building code.
70. Submit a dust and litter control plan to the City Engineer prior to beginning any construction activities. The dust and litter control plan shall address all items identified and shall be consistent with EIR Mitigation Measure 4.4-1.
71. Submit a haul route plan to the City Engineer for review and approval prior to importing or exporting any material from the site, if applicable. The plan shall include the location of the borrow or fill area, the proposed haul routes, the estimated number and frequency of trips, and the proposed schedule of hauling. Based on this plan the City Engineer shall determine whether pavement condition surveys must be conducted along the proposed haul routes to determine what impacts the trucking activities may have. The project proponents shall be responsible to repair to their pre-construction condition any roads along the utilized routes.

72. Prior to commencement of any site work that will result in a land disturbance of one acre or more, the applicant shall provide evidence to the City Engineer that the requirements for obtaining a State General Construction Permit have been met. Such evidence may be a copy of the Notice of Intent letter sent by the State Water Resources Control Board. The WDID Number shall be shown on the grading plan prior to approval by the City Engineer.
73. Submit an updated erosion control plan reflecting current site conditions to the City Engineer for review and approval no later than September 1st of every year while the Notice of Intent is active.
74. Submit the necessary documents, applications, or studies, if any, to show that the project meets National Flood Insurance Program and City Floodplain Management Ordinance requirements as they pertain to construction of any structures within the project boundary. FEMA's National Flood Insurance Rate Map currently shows the subject site is within Zone X (Panel 360 of 602, FIRM Map No. 06013C0360F, Effective Date June 16, 2009). This area is shown as being protected from the 1-percent-annual-chance or greater flood hazard by a levee system. If the FEMA map in effect at the time of grading permit approval includes the project levee and does not show any proposed building pads within a special flood hazard area then this condition shall be deemed satisfied.
75. Grade all pad elevations or install levees to satisfy Chapter 914-10 of the City's Municipal Code, including the degree of protection provisions.
76. The burying of any construction debris is prohibited on construction sites.

Utilities/Undergrounding:

77. Underground all new and existing utility distribution facilities, including those along the project frontage of Cypress Road and Sellers Avenue. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer.
78. All utility boxes shall be installed underground and all wires and cables must be installed in conduits. Compliance with this condition shall be at the discretion of the City Engineer.
79. Above ground utility boxes shall be camouflaged per the review and approval of the City Engineer.

Drainage Improvements:

80. Collect and convey all stormwater entering and/or originating on these properties, without diversion and within an adequate storm drainage facility, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage facility that conveys the storm waters to an adequate natural watercourse, in accordance with Division 914 of the Ordinance Code. The project may be eligible for reimbursement from future development for upsizing the pond and/or storm drain main lines based on the final master plan.
81. Submit a final hydrology and hydraulic report including 10-year and 100-year frequency event calculations for the proposed drainage system and stormwater pond to the City Engineer for review and approval.
82. Design and construct all storm drainage facilities in compliance with the Municipal Code and City design standards.
83. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.
84. Dedicate a public drainage easement over the drainage system that conveys storm water run-off from public streets.
85. Submit a long-term operational and maintenance plan for the publicly maintained stormwater pond, and/or any private or public interim ponds, and pump stations, to the City Engineer for review. The plan must include a level of effort estimate for staffing and maintenance requirements as well as an operational and life cycle budget analysis.
86. Convey to the City, by offer of dedication, Parcel B for open space and flood control purposes.

Landscaping in the Public Right of Way:

87. Install public right of way landscaping along Cypress Road and Sellers Avenue and trail corridors. The applicant shall work with the Community Development Department and City Engineer for the design, construction and completion of the public landscaping concurrent with the phased development of the subdivision. As part of the plan check process for the landscaping, the applicant shall develop a construction schedule approved by the Community Development Director to provide for the timely completion of the landscaping concurrent with development. Public landscape phasing shall be generally performed in tandem with adjacent subdivision improvements.
88. Maintain all landscaping within the public right of way until such time that the adjacent roadway improvements have been accepted for maintenance. Acceptance of landscaping may coincide with phased landscape improvements,

at the discretion of the City Engineer and dependent on the availability of maintenance funds.

National Pollutant Discharge Elimination System (NPDES):

89. Comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, the Regional Water Quality Control Board (Central Valley - Region IV), including the Stormwater C.3 requirements as detailed in the Guidebook available at www.cccleanwater.org.

Compliance shall include developing long-term best management practices (BMP's) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMP's in accordance with the Contra Costa Clean Water Program for the site's storm water drainage:

- Offer pavers for household driveways and/or walkways as an option to buyers.
- Minimize the amount of directly connected impervious surface area.
- Delineate all storm drains with "No Dumping, Drains to the Delta" permanent metal markers per City standards.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Distribute public information items regarding the Clean Water Program to buyers.
- Other alternatives as approved by the City Engineer.

Fees/Assessments:

90. Comply with the requirements of the development impact fees listed below, in addition to those noticed by the City Council in Resolution 00-85 and 08-03. The applicant shall pay the fees in the amounts in effect at the time each building permit is issued.

- A. Traffic Impact Fee (authorized by Ordinance No. 14-00, adopted by Resolution 49-03);
- B. Regional Transportation Development Impact Mitigation Fee (authorized by Ordinance No. 14-00, adopted by Resolution No. 73-05);
- C. Park Land Dedication In-Lieu Fee (adopted by Ordinance No. 03-03);
- D. Park Impact Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 19-03);

- E. Public Facilities Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 18-03);
- F. Fire Facilities Impact Fee, collected by the City on behalf of the Oakley Fire Protection District;
- G. East Contra Costa County Habitat Conservation Plan Fee per the East Cypress HCP MOA.

The applicant should contact the City Engineer prior to constructing any public improvements to determine if any of the required improvements are eligible for credits or reimbursements against the applicable traffic benefit fees or from future developments.

- 91. The applicant shall be responsible for paying the County Recorder's fee for the Notice of Determination as well as the State Department of Fish and Game's filing fee.
- 92. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for citywide landscaping and park maintenance, subject to an assessment for maintenance based on the assessment methodology described in the Engineer's Report. The assessment shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. Any required election and/or ballot protest proceedings shall be completed prior to approval of the final map. The Applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of annexation shall be paid by Applicant.
- 93. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for citywide street lighting costs and maintenance, subject to an assessment for street light maintenance based on the assessment methodology described in the Engineer's Report. The assessment shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of annexation shall be paid by Applicant.
- 94. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for project specific landscaping maintenance, subject to an assessment for landscape operation and maintenance based on the assessment methodology described in the Engineer's Report. The assessment shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for annexation and provide all information and documents

required by the City to process the annexation. All costs of annexation shall be paid by Applicant.

95. Participate in the formation of a mechanism to fund the additional police protection and park maintenance that will be required in the Cypress Corridor area. This annual assessment is pursuant to Section 4 of the Memorandum of Understanding between the City of Oakley and the Emerson, Gilbert and Burroughs Families dated September 23, 2002. The assessment shall initially be \$120 per parcel annually and shall include appropriate future cost of living adjustments for police services and park maintenance as established at the time of voting by the City Council. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for the formation and provide all information and documents required by the City. All costs shall be paid by Applicant.
96. Participate in the provision of funding to maintain police services by voting to approve a special tax for the parcels created by this subdivision approval. The tax shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. The election to provide for the tax shall be completed prior to filing of the final map. Should the homes be occupied prior to the City receiving the first disbursement from the tax bill, the project proponent shall be responsible for paying the pro-rata share for the remainder of the tax year prior to the City conducting a final inspection.
97. Participate in the formation of a mechanism to fund the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting, stormwater ponds and any proposed pump stations, as well as any levees proposed to be maintained by the City. The appropriate funding mechanism shall be determined by the City and may include, but not be limited to, an assessment district, community services district, or community facilities district. The funding mechanism shall be formed prior to filing of any final or parcel map, and the project proponent shall fund all costs of the formation.
98. Comply with any applicable storm drainage master plan and associated fees for drainage. The applicant shall pay any applicable fee in effect at the time of building permit issuance. Certain improvements required by the Conditions of Approval for this development or the Code may be eligible for credit or reimbursement against the drainage area fee. The developer should contact the City Engineer to personally determine the extent of any credit or reimbursement for which he might be eligible. Any credit or reimbursements shall be determined prior to filing the final map.

ADVISORY NOTES

The following advisory notes are provided to the applicant as a courtesy but are not a part of the conditions of approval. Advisory notes are provided for the purpose of informing the applicant of additional ordinance requirements that must be met in order to proceed with development.

- A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building or grading permits.
- B. The project will require a grading permit pursuant to the Ordinance Code.
- C. Applicant shall comply with the requirements of Ironhouse Sanitary District.
- D. The applicant shall comply with the requirements of the Diablo Water District.
- E. Comply with the requirements of the East Contra Costa Fire Protection District.
- F. Comply with the requirements of the Building Inspection Division. Building permits are required prior to the construction of most structures.
- G. This project may be subject to the requirements of the Department of Fish and Game. It is the applicant's responsibility to notify the Department of Fish and Game, P.O. Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Game Code.
- H. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.
- I. The applicant shall obtain an encroachment permit for construction within existing City rights of way.
- J. The applicant shall obtain an encroachment permit from Caltrans for construction within the State right of way.

PASSED AND ADOPTED by the City Council at a meeting held on the 14th day of September 2010, by the following vote:

AYES: Anderson, Connelley, Frazier, Rios, Romick

NOES: None

ABSTENTIONS: None

ABSENT: None

APPROVED:

Pat Anderson
Pat Anderson, Mayor

ATTEST:

Nancy Ortenblad 9/16/10
Nancy Ortenblad, City Clerk Date

EXHIBIT B**PROVISIONS REQUIRED FOR PUBLIC WORKS PROJECTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.**

The Developer will ensure that any contract issued by the Developer or any privities of the Developer concerning the Improvements includes, and requires the parties to such contract to comply with, all applicable provisions contained in this Exhibit A and any other applicable requirements contained in California Labor Code Section 1720 and following.

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in construction of the Improvements is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815; which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Developer and its contractors and subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the construction of the Improvements for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Improvements are to be constructed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Engineer's office and shall be made available on request. The Developer, and contractors and subcontractors engaged in the construction of the Improvements shall pay no less than these rates to all persons engaged in construction of the Improvements.

B. In accordance with Labor Code Section 1775, the Developer and any contractors and subcontractors engaged in construction of the Improvements shall comply with Labor Code Section 1775 which establishes a penalty of up to \$50 per day for each worker engaged in the construction of the Improvements who the Developer or any contractor or subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Developer, contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Developer, contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Developer, contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Developer, contractor or subcontractor had knowledge of their obligations under the California Labor Code. The Developer, contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in construction of the Improvements is not paid the general prevailing per diem wages by the subcontractor, subject to applicable law, the prime contractor is not liable for any penalties therefore unless the prime contractor had knowledge of that failure or unless the prime contractor fails to comply with all of the following requirements:

1. Any agreement executed between the Developer and a contractor or a contractor and a subcontractor for the construction of part of the Improvements shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of any subcontractor's certified payroll records.
3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for construction of the Improvements.
4. Prior to making final payment to the subcontractor, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the construction of the Improvements and any amounts due pursuant to

California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Developer and each contractor and subcontractor engaged in construction of the Improvements, shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in construction of the Improvements. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any services performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the prime contractor, on behalf of the Developer and any contractors or subcontractors engaged in construction of the Improvements, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Developer or any contractor or subcontractor engaged in construction of the Improvements to employ on the construction of the Improvements any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Developer, contractor or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT C**INSURANCE REQUIREMENTS - CONSTRUCTION CONTRACTS****MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (i.e., \$10,000,000)
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk (Course of Construction)** insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Contractor shall procure and maintain for the duration of the contract, and if Contractor has a claims-made policy, Contractor shall maintain for two years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide notice will be provided to City in the event that the policy is terminated. Contractor shall immediately notify City of any insurance cancellation or termination and shall provide replacement insurance policy documentation to the City.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **Worker's Compensation policies shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 10 10 01 and CG 20 37 10 01.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City reserves right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

EXHIBIT D

VERIFICATION OF INSURANCE