

STAFF REPORT

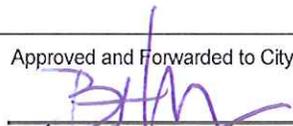
Date: Tuesday, October 11, 2016

To: Bryan H. Montgomery, City Manager

From: Kevin Rohani, P.E., Public Works Director/City Engineer

Subject: Approval of Reimbursement Agreement for Phase 2 East Cypress Road Widening, Adjacent to Emerson Ranch

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Background and Analysis

On September 14, 2010 the City Council adopted Resolution 107-10, conditionally approving the tentative map for Subdivision 9032, Emerson Ranch at the northwest corner of East Cypress Road and Sellers Avenue. Condition of Approval #49 requires the developer to construct the frontage of East Cypress Road adjacent to the project. Condition #49 also states that part of the cost of the work may be eligible for reimbursement from the City's Traffic Impact Fee Program. Exhibit A shows the areas of reimbursement.

The developer, Brookfield Emerson Land LLC (Brookfield Land), completed construction of the first segment of the East Cypress Road widening, between the west project boundary and Emerson Ranch Way/Machado Lane in early 2016, and was reimbursed for the costs covered by the City's Traffic Impact Fee Program.

Condition #49 requires a reimbursement agreement be executed before filing a final map but since the work is phased and the final maps are phased, Staff is requesting the approval of the Phase 2 reimbursement agreement at this time before the final maps for the two remaining phases are approved.

Staff has worked with Brookfield Land and their engineer to ascertain the value of the reimbursable work for the second segment. The total amount, which includes construction costs, design costs and bonding costs, was determined to be \$375,000.

Brookfield Land has requested a cash reimbursement of \$375,000.

Fiscal Impact

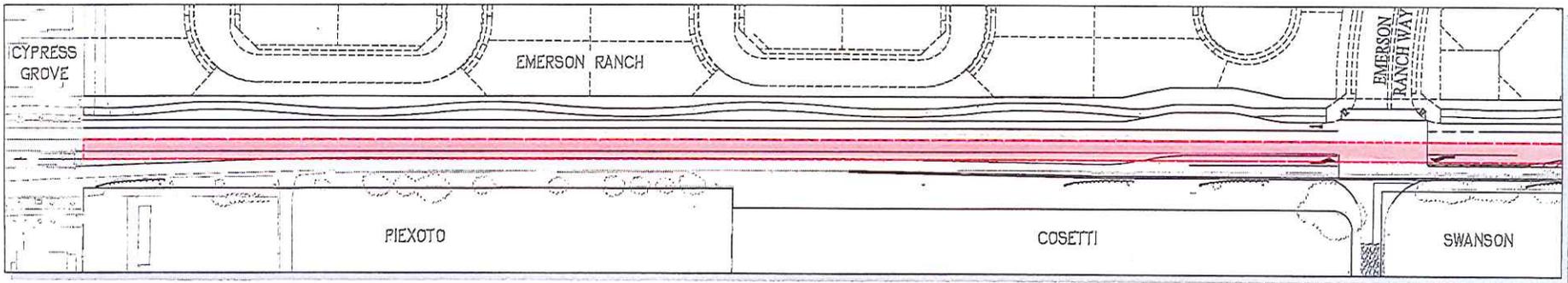
Approval of the reimbursement agreement will obligate the City to reimburse \$375,000 to Brookfield Emerson Land LLC from the Traffic Impact Fee Program.

Staff Recommendation

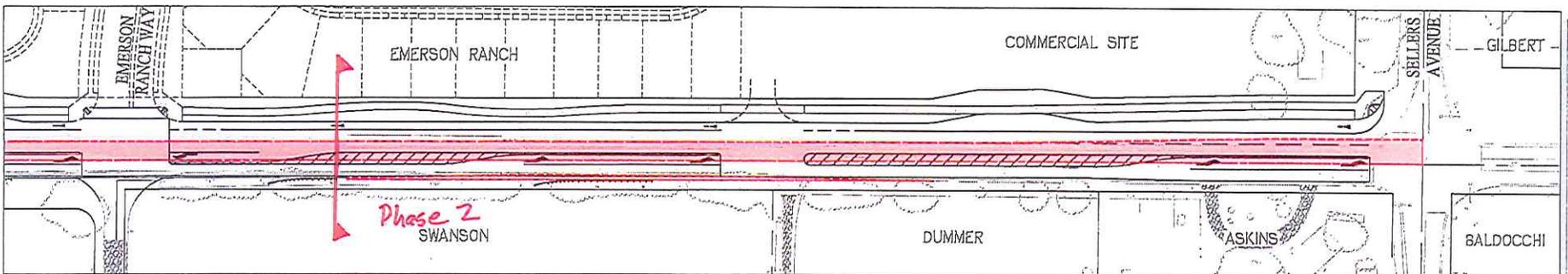
Staff recommends that the City Council adopt the Resolution authorizing the City Manager to execute the Reimbursement Agreement.

Attachments

- 1) Exhibit A
- 2) Reimbursement Agreement Resolution
- 3) Reimbursement Agreement with cost breakdown



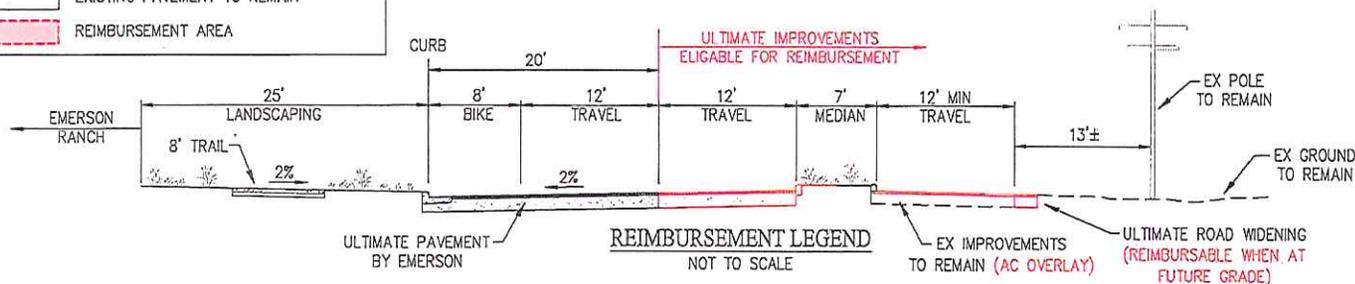
CYPRESS ROAD
CYPRESS GROVE TO EMERSON RANCH WAY



CYPRESS ROAD
EMERSON RANCH WAY TO SELLERS AVENUE

LEGEND

	REIMBURSEMENT AREA
	EXISTING PAVEMENT TO REMAIN
	ULTIMATE PAVEMENT BY EMERSON RANCH



**EMERSON RANCH
CYPRESS ROAD
REIMBURSEMENT AREAS**
CITY OF OAKLEY CONTRA COSTA COUNTY CALIFORNIA
DATE: JUNE 3, 2016 SCALE: 1" = 100'

Carlson, Harboe & Gibson, Inc.
CAL ENGINEERS • SURVEYORS • PLANNERS
3033 EMERSON RANCH, SUITE 200
RALEIGH, CALIFORNIA 94303
925.486.0111
www.chg.com

RESOLUTION NO. __-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY AUTHORIZING THE CITY MANAGER TO EXECUTE A REIMBURSEMENT AGREEMENT WITH BROOKFIELD EMERSON LAND, LLC FOR THE SECOND SEGMENT OF THE EAST CYPRESS ROAD WIDENING

WHEREAS, on September 14, 2010 the City Council adopted Resolution 107-10 conditionally approving the tentative map for Subdivision 9032 Emerson Ranch at the north west corner of East Cypress Road and Sellers Avenue; and

WHEREAS, Condition of Approval #49 requires the developer to construct the frontage of East Cypress Road adjacent to the project and also states that part of the cost of the work may be eligible for reimbursement from the City's Traffic Impact Fee Program; and

WHEREAS, Brookfield Emerson Land, LLC (Brookfield Land), has completed construction of the second segment of the East Cypress Road widening, between Emerson Ranch Way/Machado Lane and Sellers Avenue, and has requested reimbursement of the eligible costs; and

WHEREAS, Staff and Brookfield Land have reviewed the cost estimate prepared by Carlson, Barbee & Gibson, Inc. and agree the total reimbursable cost of this segment is \$375,000; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley that the City Manager is authorized to execute the reimbursement agreement, to reimburse \$375,000 in cash to Brookfield Emerson Land, LLC.

PASSED AND ADOPTED by the City Council of the City of Oakley, California, this 11th day of October, 2016 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

**REIMBURSEMENT AGREEMENT
EAST CYPRESS ROAD PHASE 2 WIDENING, NORTH SIDE
BETWEEN EMERSON RANCH WAY/MACHADO LANE
AND SELLERS AVENUE**

This REIMBURSEMENT AGREEMENT ("**Agreement**"), is entered into as of this _____ day of _____, 2016, by and between the CITY OF OAKLEY, a municipal corporation in the State of California ("**City**") and BROOKFIELD EMERSON LAND LLC, A Delaware Limited Liability Company, ("**Developer**"). City and Developer are individually referred to as a "**Party**" and collectively, the "**Parties**."

RECITALS

A. Developer is constructing the improvements associated with the Emerson Ranch development project (Subdivision 9032) as required by the conditions of approval (COAs) for the project as adopted by the City of Oakley City Council via Resolution Number 107-10 in accordance with the requirements and conditions set forth in approvals.

B. The COAs require, among other things, that certain roadway improvements along the East Cypress Road frontage be constructed by Developer. The funding for a portion of these improvements is the responsibility of the developer and a portion is eligible for reimbursement under the Traffic Impact Fee Program.

C. Developer completed the first phase of the East Cypress frontage improvements and received reimbursement for the costs incurred by Developer for construction of the eligible improvements.

D. Condition #49 requires a reimbursement agreement be executed before filing a final map but since the work is phased and the final maps are phased, Staff is requesting the approval of the Phase 2 reimbursement agreement at this time before the final maps for the two remaining phases are approved

E. Developer has provided the estimate of eligible costs associated with the construction of the Cypress Road Phase 2 construction and, after review, City agrees the costs listed in the breakdown are correct and complete.

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

AGREEMENT

1. **SCOPE OF WORK.** Subject to the terms of this Agreement, City agrees to reimburse Developer for all costs and expenses related to the construction and installation of the City's portion of the improvements depicted in the plans titled, "*Subdivision 9032 Cypress Road Phase 2 Improvement Plans*" on file in the office of the City Engineer. City acknowledges that City shall be responsible to reimburse Developer for all contractor's invoices, fees and expenses incurred in completing the Improvements. Shared costs specifically for construction staking, materials testing and observation services will be reimbursed to the Developer at the cost of such items.

2. **AMOUNT AND PAYMENT OF REIMBURSEMENT.** The total cost of the reimbursement is \$375,000 as shown in *Exhibit A ("Cost Breakdown")*. The reimbursement amount shall be paid by City to Developer in cash, in credits against traffic impact fees due for issuance of building permits or in a combination to the two as agreed upon by the Parties. Fee credits may be assigned to other entities by Developer.

3. **OWNERSHIP OF THE IMPROVEMENTS.** From and after the City's acceptance of the Improvements in accordance with this Agreement, ownership of the Improvements shall be vested exclusively in City.

4. **INDEMNIFICATION.** Developer shall defend, indemnify and hold City, its elected officials, officers, employees, and agents free and harmless from and against any and all claims, actions, causes of action, demands, expenses, costs, fines, penalties, fees, and/or liability, including from loss, damage, or injury to or death of persons or property in any manner, to the extent caused by Developer's intentional misconduct in connection with the construction and installation of the Improvements. Developer's indemnity obligations hereunder shall expire upon the statute of limitations having run on any claim arising prior to the City's acceptance of the improvements. Developer's indemnity obligations hereunder shall include attorney's fees and court costs, and shall include: (i) any liability related to or arising out of the design, drawings, plans, and/or specifications for the Improvements, (ii) any costs, expenses, fees, fines, or liability for any hazardous substances or toxic material and any required remediation, (iii) any liability to the extent caused by the negligence or intentional acts or omissions of General Contractor. All of each Party's indemnity obligations hereunder shall survive expiration of this Agreement. City's indemnity obligations hereunder shall include attorney's fees and court costs, but shall exclude any liability to the extent caused by the intentional misconduct of Developer or its agents, representatives, consultants, and/or contractors.

5. **NOTICES.** Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail or express mail, return receipt requested with postage prepaid, to the Party's mailing address, or transmitted by facsimile equipment if receipt is acknowledged. The respective mailing addresses and contact information of the Parties are, until changed, the following:

City: City Engineer
Attn: Kevin Rohani
City of Oakley
3231 Main Street
Oakley, CA 94561
Facsimile: (925) 625-9194

With a Copy to: City Attorney
City of Oakley
3231 Main Street
Oakley, CA 94561
Facsimile: (925) 625-4230

Developer: Brookfield Emerson Land LLC
Attn: Gonzalo Rodriguez
500 La Gonda Way, Suite 100
Danville, CA 94526

Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner proved in this Section. All notices shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

6. **NON-ASSIGNMENT.** The license granted herein is personal to Developer and shall not be assignable; provided, however, Developer may, at its discretion and on terms and conditions it determines, and subject to the terms of this Agreement, contract with consultants and contractors to construct and install the Improvements. Developer's right to Reimbursement, as set forth herein, may be assignable by Developer at its discretion and with notice to the City.

7. **SEVERABILITY.** In the event any one or more of the provisions of the Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in effect and the Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

8. **GOVERNING LAW.** This Agreement is made under, shall be governed by and construed in accordance with the laws of the State of California.

9. **CONSTRUCTION.** This Agreement has been reviewed and revised by legal counsel for both Developer and City and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of the Agreement.

10. **FURTHER ASSURANCES.** Each Party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objectives of the Agreement.

11. **RECITALS.** All of the facts and background information set forth in the RECITALS, above, are incorporated into this Agreement and constitute a part hereof.

12. **ATTORNEY'S FEES.** In the event any action is commenced to enforce or interpret any term or condition of this Agreement, in addition to costs and any other relief, the prevailing party shall be entitled to reasonable attorney's fees. Jurisdiction and venue in the event of any legal action shall be in Contra Costa County, California.

13. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the Parties hereto with respect to the matters contained herein.

14. **FORCE MAJEURE.** Any prevention of or delay in the performance by a party hereto of its obligations under this Agreement caused by governmental restrictions, regulations, controls, action or inaction, or other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party of its obligations hereunder for a period of one day for each such day of delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Brookfield Emerson Land LLC

CITY OF OAKLEY, a Municipal Corporation
in the State of California

By:

By:

Bryan H. Montgomery, City Manager

Name

Attest:

Title

Libby Vreonis, City Clerk

Signature

Approved as to Form:

Derek P. Cole, City Attorney

Exhibit: A – Cost Breakdown

EXHIBIT A

COST BREAKDOWN



**Carlson, Barbee
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

ENGINEER'S PRELIMINARY ESTIMATE
REIMBURSEMENTS / FEE CREDITS
EMERSON RANCH
CYPRESS ROAD - PHASE 2
CITY OF OAKLEY, CALIFORNIA

May 10, 2016
Job No.: 0878-060

Item	Description	Quantity	Unit	Unit Price	Amount
<u>DEMOLITION / SITE PREPARATION</u>					
1	Clearing and Grubbing (<i>Areas of Widening and Northern Frontage</i>)	1	LS	\$ 750	\$ 750
2	Rough Grading	500	CY	\$ 4.75	\$ 2,375
Subtotal Demolition / Site Preparation					\$ 3,125
<u>STREET IMPROVEMENTS</u>					
3	Fine Grading	3,600	SF	\$ 0.40	\$ 1,440
4	6" Asphalt Concrete	3,600	SF	\$ 3.10	\$ 11,160
5	21" Aggregate Base	3,600	SF	\$ 2.65	\$ 9,540
6	AC Overlay - <i>Existing Pavement to Remain</i>	20,300	SF	\$ 3	\$ 60,900
7	Striping	1	LS	\$ 5,000	\$ 5,000
8	Subgrade Fabric	3,600	SF	\$ 0.70	\$ 2,520
9	Traffic Signal Modification	1	LS	\$ 175,000	\$ 175,000
Subtotal Street Improvements					\$ 265,560
<u>MISCELLANEOUS</u>					
10	Mobilization	1	LS	\$ 10,000	\$ 10,000
11	Erosion Control	1	LS	\$ 3,000	\$ 3,000
12	Traffic Control and Construction Sequencing	1	LS	\$ 50,000	\$ 50,000
13	Existing Gas Line Protection	600	LF	\$ 5	\$ 3,000
Subtotal Miscellaneous					\$ 66,000
SUBTOTAL CYPRESS ROAD - PHASE 2 REIMBURSEMENT					\$ 334,685
10% PROFESSIONAL SERVICES					\$ 33,469
2% BONDING AND FINANCING					\$ 6,694
TOTAL CYPRESS ROAD - PHASE 2 REIMBURSEMENT					\$ 375,000
<i>(to the nearest \$1,000)</i>					