



## STAFF REPORT


**Date:** Tuesday, June 28, 2016

**To:** Bryan H. Montgomery, City Manager

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

**Subject:** Approval of Reimbursement Agreement for 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), has completed construction of the first segment of the East Cypress Road widening, between the west project boundary and Emerson Ranch Way/Machado Lane, and has requested reimbursement of the eligible costs.

Staff has worked with Brookfield Land and their engineer to ascertain the value of the reimbursable work for the first segment. The total amount which includes construction costs, design costs and bonding costs was determined to be \$465,000.

Brookfield Land has requested a cash reimbursement of \$400,000 and the balance to be applied to Traffic Impact Fees for future building permits. The cash reimbursement would be to Brookfield Emerson Land LLC, and the impact fee credits would be applied to permits issued to Brookfield Emerson Merritt LLC, which is the entity doing the home construction at Emerson Ranch.

### Fiscal Impact

Approval of the reimbursement agreement will obligate the City to reimburse \$400,000 to Brookfield Emerson Land LLC from the Traffic Impact Fee Program and

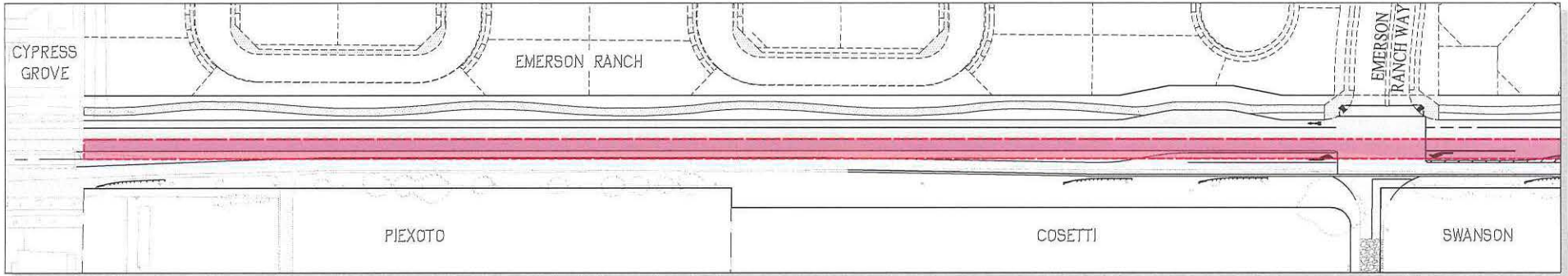
to credit Traffic Impact Fees for approximately 4.5 building permits to Brookfield Emerson Merritt LLC.

**Staff Recommendation**

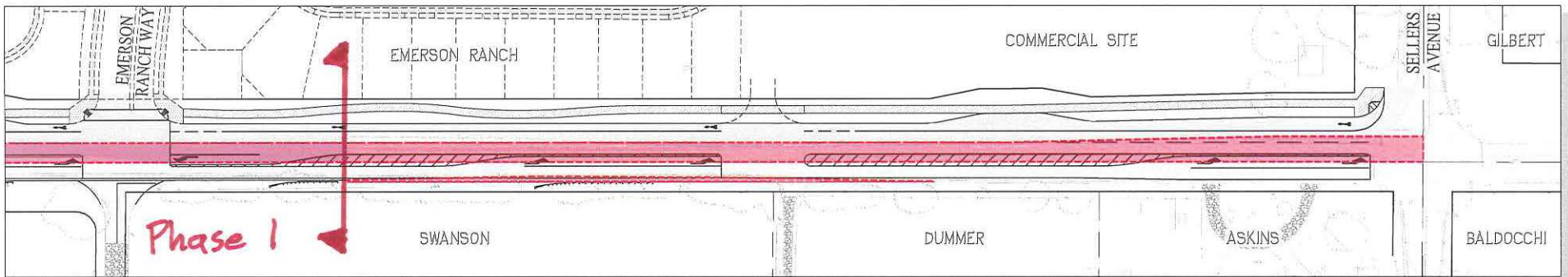
Staff recommends that the City Council adopt the Resolution authorizing the City Manager to execute the Reimbursement Agreement.

**Attachments**

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






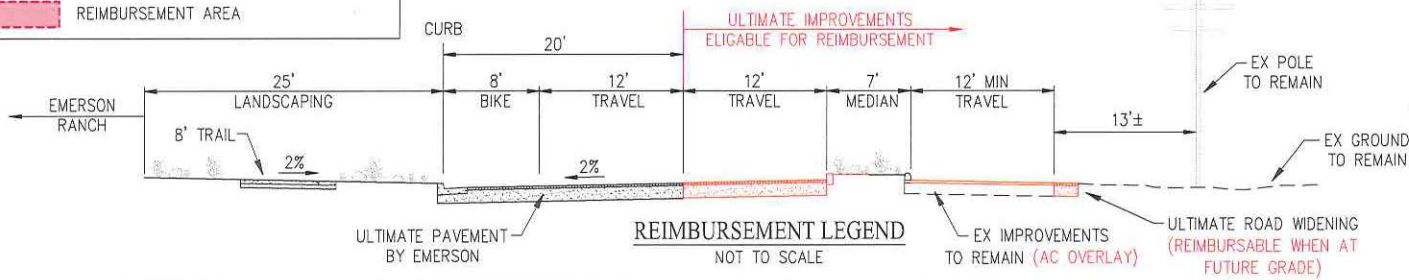
**CYPRESS ROAD**  
CYPRESS GROVE TO EMERSON RANCH WAY



**CYPRESS ROAD**  
EMERSON RANCH WAY TO SELLERS AVENUE

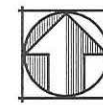
**LEGEND**

-  ULTIMATE PAVEMENT BY EMERSON RANCH
-  EXISTING PAVEMENT TO REMAIN
-  REIMBURSEMENT AREA



**EMERSON RANCH  
CYPRESS ROAD  
REIMBURSEMENT AREAS**

CITY OF OAKLEY CONTRA COSTA COUNTY CALIFORNIA  
DATE: JUNE 3, 2016 SCALE: 1" = 100'



**cbg** Carlson, Barboe & Gibson, Inc.  
CIVIL ENGINEERS • SURVEYORS • PLANNERS  
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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 FIRST  
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 first segment of the East Cypress Road widening, between the west project boundary and Emerson Ranch Way/Machado Lane, 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 \$465,000; and

**WHEREAS**, Brookfield Land has requested a cash payment of \$400,000 and the remainder of the reimbursement to be applied as Traffic Impact Fee credits for future building permits to be issued to Brookfield Emerson Merritt, LLC;

**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 \$400,000 in cash to Brookfield Emerson Land, LLC and to apply Traffic Impact Fee credits for future building permits to be issued to Brookfield Emerson Merritt, LLC.

**PASSED AND ADOPTED** by the City Council of the City of Oakley, California, this 28<sup>th</sup> day of June 2016 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

\_\_\_\_\_  
Kevin Romick, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**REIMBURSEMENT AGREEMENT**  
**EAST CYPRESS ROAD WIDENING, NORTH SIDE**  
**BETWEEN THE EAST SIDE OF CYPRESS GROVE**  
**TO EMERSON RANCH WAY/MACHADO LANE**

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 has fully completed the first phase of the East Cypress frontage improvements and has requested Developer and City enter into this reimbursement agreement to clearly identify the improvements eligible for reimbursement and the costs incurred by Developer for construction of the eligible improvements.

D. Developer has provided the breakdown of costs associated with the construction of the City's portion of the Cypress Road Phase 1 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 1 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 \$465,000 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



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:

\_\_\_\_\_  
Name

\_\_\_\_\_  
**Bryan H. Montgomery, City Manager**

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
**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 1  
CITY OF OAKLEY, CALIFORNIA

April 4, 2016  
Job No.: 0878-060

Item	Description	Quantity	Unit	Unit Price	Amount
<b>DEMOLITION / SITE PREPARATION</b>					
1	Clearing and Grubbing ( <i>Areas of Widening and Northern Frontage</i> )	0.25	AC	\$ 750	\$ 188
2	Remove Existing Pavement and Baserock	22,860	SF	\$ 1.80	\$ 41,148
3	Remove Concrete Section	1	LS	\$ 20,551.50	\$ 20,552
4	Remove Existing Median, Gutter Pan and Brick Banding	25	LF	\$ 35	\$ 875
5	Rough Grading ( <i>Assume 18" Thick</i> )	1,675	CY	\$ 4.75	\$ 7,956
Subtotal Demolition / Site Preparation					\$ 70,718
<b>SANITARY SEWER</b>					
6	Adjust Existing Vault to Grade	1	EA	\$ 1,290	\$ 1,290
Subtotal Sanitary Sewer					\$ 1,290
<b>STREET IMPROVEMENTS</b>					
7	Fine Grading	30,000	SF	\$ 0.40	\$ 12,000
8	Import Material to Proposed Median ( <i>Assume 18" Thick</i> )	550	CY	\$ 10	\$ 5,500
9	6" Asphalt Concrete	20,450	SF	\$ 3.10	\$ 63,395
10	21" Aggregate Base	20,450	SF	\$ 2.65	\$ 54,193
11	AC Overlay - Eastbound Lane	1	LS	\$ 57,600	\$ 57,600
12	Median Curb	1,280	LF	\$ 18.50	\$ 23,680
13	Striping	1	LS	\$ 3,000	\$ 3,000
14	Subgrade Fabric	1	LS	\$ 14,481	\$ 14,481
Subtotal Street Improvements					\$ 233,849
<b>LANDSCAPING</b>					
15	Median Landscape and Irrigation	3,500	SF	\$ 5	\$ 17,500
Subtotal Landscaping					\$ 17,500
<b>MISCELLANEOUS</b>					
16	Mobilization	1	LS	\$ 6,185	\$ 6,185
17	Erosion Control	1	LS	\$ 2,000	\$ 2,000
18	Guardrail at Pole ( <i>Cypress Grove</i> )	1	EA	\$ 14,875	\$ 14,875
19	Traffic Control and Construction Sequencing	1	LS	\$ 61,200	\$ 61,200
20	Existing Gas Line Protection	1,550	LF	\$ 5	\$ 7,750
Subtotal Miscellaneous					\$ 92,010
<b>SUBTOTAL CYPRESS ROAD REIMBURSEMENT</b>					<b>\$ 415,367</b>
<b>10% PROFESSIONAL SERVICES</b>					<b>\$ 41,537</b>
<b>2% BONDING AND FINANCING</b>					<b>\$ 8,307</b>
<b>TOTAL CYPRESS ROAD REIMBURSEMENT</b>					<b>\$ 465,000</b>
<i>(to the nearest \$1,000)</i>					

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