

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Reimbursement Agreement – 200 Annis Road

DATE: February 19, 2013

### City Council Goals:

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)

To maintain and improve infrastructure. (#3)

### Purpose:

To approve an agreement that allows parties required to construct public improvements now, to receive pro rata reimbursement from future developments that would have been required to construct these very same improvements if their application had been the first to be submitted.

### Recommendation:

1. Approve the Agreement and authorize the Mayor to sign this document on behalf of the City.
2. Direct the City Clerk to forward the signed Reimbursement Agreement to San Mateo County for recordation, and to file a copy of the recorded agreement in the address files for 243 Annis Road and 1154 Humboldt Road.

### Background:

Section 15.08.140 of the Brisbane Municipal Code specifies that when building additions or alterations in excess of fifty percent of value or area are proposed, then the requirements for conformity with current standards for new construction will be imposed. One of the “current standards” includes improving substandard street access to the property.

The imposition of the current standards often requires road widening within the prolongation of the affected property’s side lot lines, and in the case of 200 Annis, also required the developing property to obtain fee title for a portion of Annis Road, and to transfer this title to the city.

The City Council has previously approved similar Reimbursement Agreements with the following property owners:

- 350 Kings Road, in 2004, for widening their frontage of public roadway to 28’.
- 90 Santa Clara Street/29 San Francisco Avenue, in 2005, for widening both roadways to 20’, and extending Santa Clara to connect with San Francisco.
- 2, 6 & 8 Humboldt Court (now, San Diego Court), in 2007, for major street improvements at the intersection of Humboldt Road and Annis Road.

In the Reimbursement Agreement considered here, and the three previous agreements, city staff was responsible for determining the pro rata share to be applied to “benefitting properties”, and was also responsible for reviewing the owner-provided certification of construction costs associated with the roadway improvements (i.e, the correction of the “substandard access”).

### **Discussion:**

Entering into this Reimbursement Agreement does not place any burden on the adjoining benefitting properties that did not exist prior to the improvements installed by the owners of 200 Annis. The major benefit of approving this agreement is that it provides the potential for equitable distribution of construction costs; that is, if a benefitting property were to submit an application for a project that would require the same road widening as required for 200 Annis, in the absence of 200 Annis’ completed work, they would have been required to fully fund the project. If these other properties submit such an application during the twenty year term of this agreement, they will only be required to pay their pro rata share of the total constructed cost.

### **Alternatives**

- 1) Do not approve the Reimbursement Agreement. This alternative is not recommended, as it is inconsistent with approvals granted by previous City Councils, and because it also seems to place an unfair burden on whichever property owner first decides to, or needs to, make major improvements to their property.
- 2) Approve the Reimbursement Agreement, but change the term from twenty years to ten years. The city has approved agreements with ten, and also with twenty year terms. The term of twenty years proposed in this agreement was requested by the property owners.

### **Fiscal Impact:**

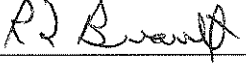
There is no direct cost envisioned to the city as a result of approving this agreement.

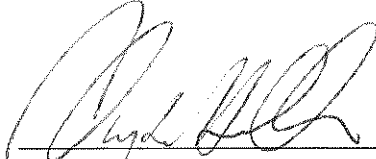
### **Measure of Success**

Continuation or establishment of policies that equitably share the costs of road widening, when this requirement is triggered by BMC §15.08.140.

**Attachments:**

- 200 Annis Road Reimbursement Agreement

  
\_\_\_\_\_  
Director of Public Works/City Engineer

  
\_\_\_\_\_  
City Manager

RECORDING REQUESTED BY:

City of Brisbane

AFTER RECORDATION, MAIL TO:

City of Brisbane  
50 Park Place  
Brisbane, CA 94005

*This instrument benefits City of Brisbane only.  
No Fee Required.*

THIS SPACE FOR RECORDER'S USE

## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT**, dated 1.23.2013, between THE CITY OF BRISBANE, a municipal corporation ("City") and ALEXANDER ZAVODNIK and ALINA ZAVODNIK, trustees of the ZAVODNIK FAMILY TRUST ("Owner"), is made with reference to the following facts:

A. Owner is the owner of certain real property located at 200 Annis Road, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-555-150, and more particularly described in Exhibit "A" attached hereto and made a part hereof ("the Property").

B. Owners have constructed a new single family residence on the Property and as a condition for approval of such development, City has required Owners to widen and improve the portion of Annis Road adjacent to the Property ("the Street Improvements").

C. City has determined that the Street Improvements may directly benefit the properties located at 243 Annis Road and 1154 Humboldt Road since a similar requirement to widen the public street would have been imposed upon the development of these properties. City and Owner have entered into this Agreement for the purpose of allocating a proportionate share of the construction cost for the Street Improvements to such other properties and providing for a reimbursement to Owner of such proportionate shares if development occurs on either or both of the other properties during the term of this Agreement.

**NOW, THEREFORE, the parties agree as follows:**

1. The Street Improvements have been accepted by the City Engineer, and the Owner has provided City with a detailed certification of all construction costs incurred by Owner for the Street Improvements, including the cost of any design, engineering, plan check, or inspection services provided by City for the Street Improvements and charged to Owner. The cost statement was supported by such invoices, cancelled checks, and other documentation as City required to verify the accuracy and legitimacy of all costs claimed by Owner. The total cost ("Final Improvement Cost") of the Street Improvements has been determined to be \$151,430.83.

2. Based upon the frontage on Annis Road shared by each of the properties benefiting from the Street Improvements, the parties agree that fifty percent (50%) of the Final Improvement Cost should be allocated to the Property of Owner, twenty-three percent (23%) should be allocated to the property located at 243 Annis Road, identified as Assessor's

Parcel Number 007-554-020, and twenty-seven percent (27%) of the Final Improvement Cost should be allocated to the property located at 1154 Humboldt Road, identified as Assessor's Parcel Number 007-554-010.

3. City agrees that in the event an application is submitted during the term of this Agreement for development of either 243 Annis Road or 1154 Humboldt Road ("the Participating Properties"), and such application involves a project for which City would have required the widening and improvement of Annis Road, in the absence of the Street Improvements installed by Owners, ("Application") based upon the ordinances and building regulations of the City in effect as of the date such Application is submitted, then City shall require as a condition for approval of the development that the percentage share of the Final Improvement Cost allocated to that Participating Property be paid to City in cash prior to the issuance of a building permit for the proposed development. Upon receipt of such payment, City shall promptly remit the same to Owners or to their successors or assigns.

Due to the configuration of Annis Road, and due to the uncertainty of a development proposal for the property at 1154 Humboldt Road triggering a requirement to widen Annis Road (i.e., the submittal of an Application proposing vehicular access to this property from Annis Road), collection of percentage share of the Final Improvement Cost for Participating Parties shall be as follows:

In the event that 243 Annis Road first submits an Application, the City shall collect \$75,715.42 from that Participating Property (243 Annis), and then enter into a Reimbursement Agreement with that property owner to collect \$40,886.32 (e.g.,  $27\% \times \$151,430.83 = \$40,886.32$ ) from the owner of 1154 Humboldt Road in the event that Participating Property (1154 Humboldt) submits an Application within the term of this Agreement.

In the event that 1154 Humboldt Road first submits an Application, the City shall collect \$40,886.32 from that Participating Property. If 243 Annis Road then submits an Application within the term of this Agreement, the City shall collect \$34,829.09 (e.g.,  $23\% \times \$151,430.83 = \$34,829.09$ )

4. Nothing herein shall require City to grant a development approval for either of the Participating Properties under circumstances where such approval would otherwise be denied, nor shall this Agreement limit in any way the authority of City to impose conditions or exactions in addition to the reimbursement condition described herein. City shall be relieved of its obligation under this Agreement to collect the reimbursement amount if City is legally prohibited from doing so under any state or federal law, regulation, or court decision.

5. This Agreement shall remain in effect for a period of twenty (20) years from the date hereof.

6. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, including any transferee of legal title to the Property.

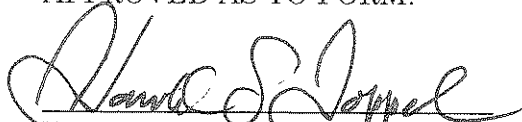
IN WITNESS WHEREOF, the parties have executed this Reimbursement Agreement on the date first above written.

**CITY:**

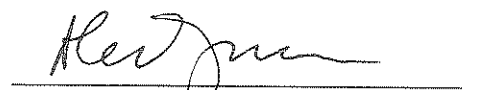
THE CITY OF BRISBANE,  
a municipal corporation

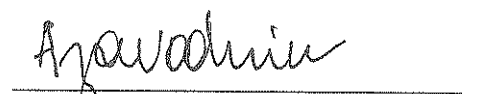
By: \_\_\_\_\_  
Raymond C. Miller, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Harold S. Toppel, City Attorney

**OWNER(S):**

  
\_\_\_\_\_  
ALEXANDER ZAVODNIK,  
Trustee, ZAVODNIK FAMILY TR.

  
\_\_\_\_\_  
ALINA ZAVODNIK,  
Trustee, ZAVODNIK FAMILY TR.

**ATTACH NOTARIZED SIGNATURE FOR OWNER(S) HERE**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN MATEO }

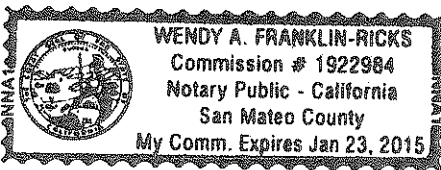
On 1.28.2013 before me, Wendy A. Franklin-Ricks, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Alexander Zavodnik & Alina ZAVODNIK  
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
 Signature Wendy A. Franklin-Ricks  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

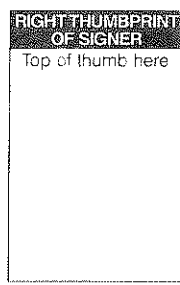
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

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

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_



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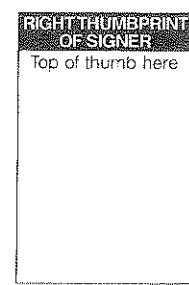


EXHIBIT "A"

Legal Description

PARCEL I;

PARCEL B, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, CITY OF BRISBANE, BEING A RESUBDIVISION OF THE LANDS OF NEILSON, AS RECORDED IN BOOK 1137, PAGE 297 OF RECORDS OF SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MAY 9, 1974, IN BOOK 24 OF PARCEL MAPS, AT PAGE 41.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR THE INSTALLATION, MAINTENANCE, REPAIR AND REPLACEMENT OF A SANITARY SEWRR PIPE WITHIN A STRIP OF LAND, 8 FEET WIDE, BEING MEASURED AT RIGHT ANGLES AND LYING ADJACENT TO AND EASTERLY AND SOUTHEASTERLY, RESPECTIVELY, OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF PARCEL B, AS SHOWN ON THAT CERTAIN MAP ENTITLED, " PARECEL MAP, CITY OF BRISBANE, BEING A RESUBDIVISION OF THE LANDS OF NEILSON, AS RECORDED IN BOOK 1137, PAGE 297 OF RECORDS, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO, STATE OF CALIFORNIA, ON MAY 9, 1974, IN BOOK 24 OF PARCEL MAPS, AT PAGE 41, DISTANT THEREON SOUTH 3° 46' EAST, 10 FEET FROM THE NORTHEASTERLY CORNER OF SAID PARCEL B; RUNNING THENCE FROM SAID POINT OF BEGINNING, ALONG SAID EASTERLY LINE AND THE NORTHERLY PROLONGATION THEREOF, NORTH 3° 46' WEST, 50 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE GENERAL NORTHERLY LINE OF PARCEL A, AS SHOWN ON THE AFORESAID PARCEL MAP; RUNNING THENCE ALONG SAID GENERAL NORTHERLY LINE, 59° 40' EAST, 45 FEET, MORE OR LESS, TO THE INTERSECTION THEREOF WITH THE SOUTHWESTERLY LINE OF SAN BRUNO AVENUE, AS SHOWN ON SAID PARCEL MAP.

THE SOUTHERLY TERMINUS OF SAID EASEMENT TO BE A LINE EXTENDING NORTH 59° 56' 32" EAST FROM THE ABOVE DESCRIBED TRUE POINT OF BEGINNING, AND THE NORTHEASTERLY TERMINUS OF SAID EASEMENT TO BE THE AFORESAID SOUTHWESTERLY LINE OF SAN BRUNO AVENUE.

PARCEL III:

NON-EXCLUSIVE AND PERPETUAL EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS OF PEDESTRIANS AND VEHICLES OF ANY NATURE, UTILITIES, TELEPHONE, WATER LINES, STORM DRAIN, SEWER, CABLE TELEVISION AND



ALL OTHER MANNER OF UTILITIES AS APPROPRIATE FOR USE DESCRIBED AS FOLLOWS:

A PORTION OF RANCHO CANADA DE GUADALUPE LA VISITACION Y RODEO VIRGO, SAN MATEO COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE LAND DESCRIBED IN QUITCLAIM DEED FROM FIRST AMERICAN TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION, AS SUCCESSOR TO SAN MATEO COUNTY TITLE COMPANY TO VIVIAN B. FERN, RECORDER SEPTEMBER 9, 1992, AS INSTRUMENT NO. 92145730, SAN MATEO COUNTY RECORDS.

SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PART OF ANNIS ROAD AS SHOWN ON THE MAP ATTACHED HERETO, LYING NORTHERLY OF THE SOUTHERLY PROLONGATION OF THE MOST SOUTHERLY BOUNDARY LINE OF PARCEL B, PARCEL MAP FILED MAY 9, 1974 IN BOOK 24 OF PARCEL MAPS AT PAGE 41. SAID BOUNDARY LINE BEARING N 65° 00' 39" E.

A.P. No.: 007-555-150