

2017 MAR 29 PM 1:10

OAKLAND CITY COUNCIL

RESOLUTION NO. ~~86687~~ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT WITH 53RD STREET/SAN PABLO AVENUE, LLC FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS AS A CONDITION TO FINAL MAP APPROVAL FOR TRACT NO. 8161 LOCATED AT 5300 and 5310 SAN PABLO AVENUE

WHEREAS, 53rd Street/San Pablo Avenue, LLC, a California limited liability company (“Subdivider”), is the subdivider of eight (8) parcels identified by the Alameda County Assessor as APNs 013-1186-013-02 and 013-1186-013-03, and by the Alameda County Clerk-Recorder as Tract No. 8161, and by the City of Oakland as 5300 and 5310 San Pablo Avenue; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration the real property comprising Tract No. 8161 through a grant deed, series no. 2006252949, recorded June 30, 2006, by the Alameda County Clerk-Recorder; and

WHEREAS, said property is comprised of Lots 1, 2, and a portion of Lot 3 (Block D) of the Map entitled “Parsons Golden Gate Tract”, recorded by the Alameda County Clerk-Recorder on October 3, 1989 in Book 9 of maps, Page 32; and

WHEREAS, the Subdivider applied to the City of Oakland for a Tentative Tract Map (TTM 8161) to subdivide said platted land, which proposed:

- the subdivision of two vacant lots into eight (8) mini-lots accessed by a shared-driveway from 53rd Street; and
- the construction of two rows of three-story buildings that includes 16 residential dwelling units, 4 commercial units, and 16 covered off-street parking spaces; and

WHEREAS, on February 5, 2014, the City Planning Commission approved the Tentative Tract Map for Tract No. 8161 and the land use entitlements (CDV13-267), and affirmed staff’s environmental determination that the project is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with a community plan, general plan or zoning) and 15332 (infill project); and

WHEREAS, the Subdivider has presented a Final Map to the City, identified as Tract Map No. 8161, which proposes the subdivision of eight (8) developable parcels, mini-lot development, identified as Lots 1, 2, 3, 4, 5, 6, 7 and 8; and

WHEREAS, through a separate companion Resolution, staff is seeking conditional approval of Final Map No. 8161; and

WHEREAS, the Subdivider has employed a competent design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements in the public right of way; and

WHEREAS, the City Engineer has approved infrastructure permit number PX1500029 and the Subdivider's plans and specifications for construction of the required public infrastructure improvements, attached hereto as *Exhibit A* and incorporated herein; and

WHEREAS, pursuant to Government Code section 66462 and Oakland Municipal Code section 16.20.100, as a condition precedent to approval of the Final Map for Tract No. 8161, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit B* and incorporated herein, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Oakland Municipal Code section 16.20.100, and as required by the Subdivision Improvement Agreement, the Subdivider has deposited adequate security in the form of surety bonds to secure the Subdivider's performance of the deferred public infrastructure improvements identified in the Subdivision Improvement Agreement; and

WHEREAS, this action is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan or zoning) and 15332 (infill development projects), each as a separate and independent basis and when viewed collectively as an overall basis for CEQA clearance; now, therefore, be it

RESOLVED: That the City Administrator or designee is hereby authorized to enter into a Subdivision Improvement Agreement with 53rd Street/San Pablo Avenue, LLC for deferred construction of public infrastructure improvements as a condition to final map approval for Tract No. 8161; and be it

FURTHER RESOLVED: That all documents related to this Resolution shall be reviewed and approved by the City Attorney's prior to execution; and be it

FURTHER RESOLVED: That the City Engineer is authorized to cause the fully executed Subdivision Improvement Agreement to be filed concurrently with the fully endorsed Final Map for Tract No. 8161 for recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That this Resolution shall be effective upon its adoption by a sufficient affirmative votes of the elected members of Council of the City of Oakland, as provided in the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 18 2017

PASSED BY THE FOLLOWING VOTE:

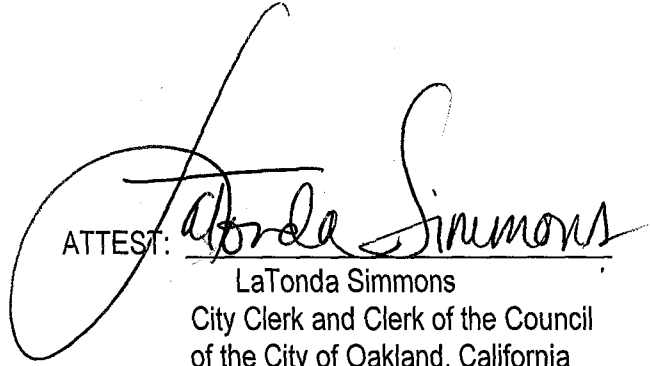
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN ~~AND PRESIDENT REED~~ → 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibits:

Exhibit A, Public Infrastructure Improvements (four pages)

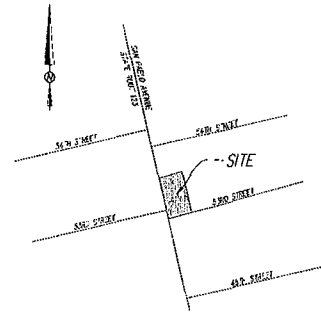
Exhibit B, Subdivision Improvement Agreement (fourteen pages)

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR 29 PM 1:10

EXHIBIT A

IMPROVEMENT PLANS
P-JOB PERMIT #PX1500029
TRACT 8161



VICINITY MAP
NOT TO SCALE

PX 1500029

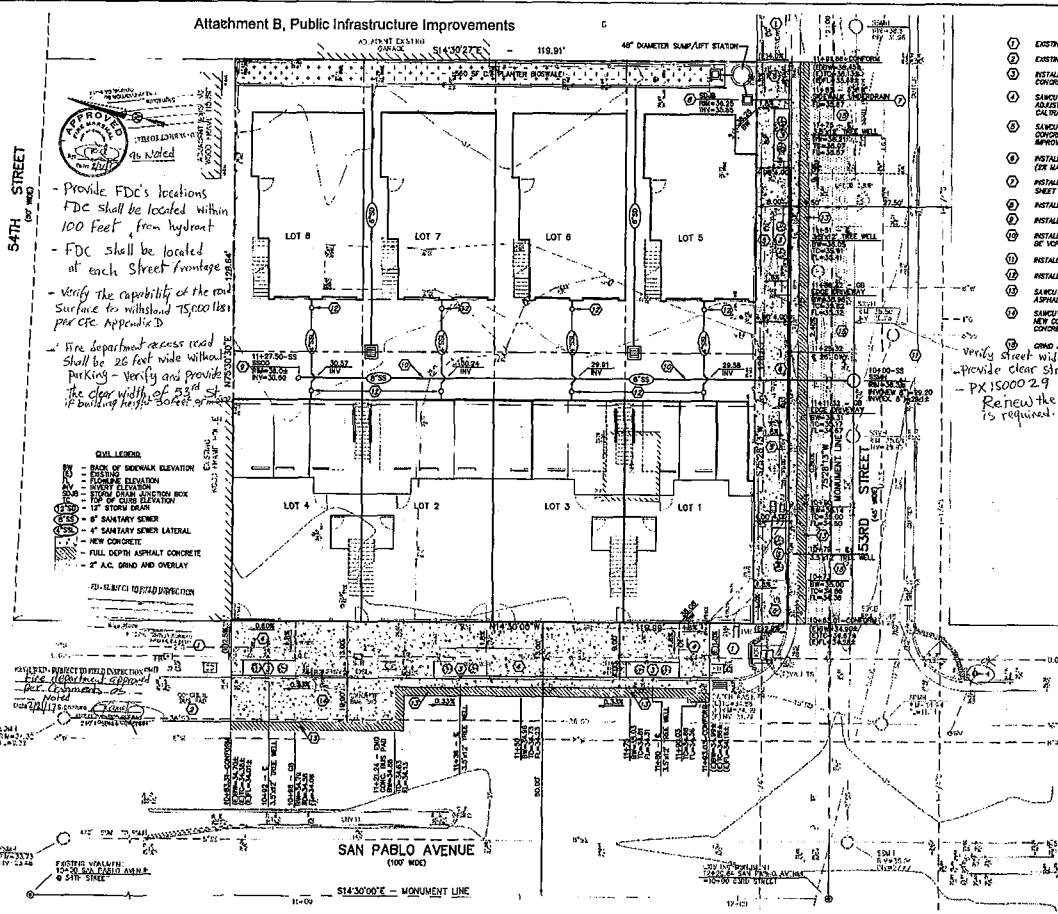
APPROVED
City of Oakland Planning & Building
[Signature]



CO.0

REVISIONS	PROJECT	KISTER, SAVO & REI, INC. LAND SURVEYING CIVIL ENGINEERS 200 SAN PABLO AVENUE SAN FRANCISCO, CALIFORNIA 94133 PHONE 415 435 1000 FAX 415 435 1001 WWW.KSRI.COM KING COUNTY DEVELOPMENT CO. LLC PROJECT NO. 1500029 DATE JANUARY 18, 2017 SHEET NO. X-6019	DRAWN BY COVER SHEET PUBLIC IMPROVEMENTS P-JOB PERMIT #PX1500029 TRACT 8161 IMPROVEMENTS OAKLAND CALIFORNIA
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Attachment B, Public Infrastructure Improvements



Provide FDC's locations
FDC shall be located within
100 feet from hydrant
FDC shall be located
at each Street frontage
Verify the capability of the
Surface to withstand 75000 lbs
per sq. foot
Fire department access road
shall be 26 feet wide without
parking - verify and provide
the clear width of 26 feet
if built up the Street

- QUALIFIERS
- BACK OF SIDEWALK ELEVATION
 - FINISH ELEVATION
 - TOP OF CURB
 - STORM DRAIN JUNCTION BOX
 - 1" STORM DRAIN
 - 4" SANITARY SEWER
 - 4" SANITARY SEWER LATERAL
 - NEW CONCRETE
 - FULL DEPTH ASPHALT CONCRETE
 - 2" A.C. GRIND AND OVERLAY

- CIVIL WORK LEGEND**
- 1 EXISTING CONCRETE CURB, GUTTER & SIDEWALK/SIDEWALK/PEDESTRIAN RAMP TO REMAIN
 - 2 EXISTING CONCRETE BUS PAD & CURB TO REMAIN
 - 3 INSTALL 12" x 12" LANDSCAPE PLANTER TO ACCOMMODATE 2 NEW TREES. INSTALL TREE GRATES TO BE FLUSH WITH CONCRETE. SEE LANDSCAPE PLANS FOR MORE INFORMATION. ENDORSEMENT PERMITS REQUIRED FOR TREE PERMITS.
 - 4 SAWCUT AND REMOVE EXISTING CONCRETE PUBLIC IMPROVEMENTS & TREES ALONG THE SAN PABLO AVENUE FRONTAGE. ADJUST EXISTING UTILITY BOXES, ETC. TO NEW GRADE. INSTALL 4" THICK CONCRETE SIDEWALK AND 4" CURB & GUTTER PER CALTRANS STD. DRAINING AREA. NEW PUBLIC IMPROVEMENTS TO CONFORM TO EXISTING PUBLIC IMPROVEMENTS AT CORNER LINE.
 - 5 SAWCUT AND REMOVE EXISTING CONCRETE PUBLIC IMPROVEMENTS ALONG THE 54TH STREET FRONTAGE. INSTALL 4" THICK CONCRETE SIDEWALK AND 4" CURB & GUTTER PER CITY OF OAKLAND STANDARD DRAWING S-1. NEW PUBLIC IMPROVEMENTS TO CONFORM TO EXISTING PUBLIC IMPROVEMENTS AT CORNER LINE.
 - 6 INSTALL 27 FOOT WIDE CONCRETE DRIVEWAY PER CITY OF OAKLAND STANDARD DRAWING S-2. MAINTAIN 4" LEVEL AREA FOR MAXIMUM CROSS SLOPE FOR PEDESTRIAN PATH OF TRAVEL BEHIND DRIVEWAY.
 - 7 INSTALL 2" x 12" REGULAR BURNER UNDERDRAIN PER CITY OF OAKLAND STANDARD DRAWING D-15 & DETAIL ON SHEET C1.2. STORM DRAIN CONDUIT MATERIAL TO BE FIBERGLASS MAT WITH POLYESTER RESIN, OR EQUAL.
 - 8 INSTALL 18" x 18" STORM DRAIN JUNCTION BOX, US CONCRETE TYPE OTHER WITH DECORER PLATE COVER OR EQUAL.
 - 9 INSTALL SANITARY SEWER CLEANOUT PER CITY OF OAKLAND STANDARD DRAWING D-2.
 - 10 INSTALL 120-14 LINEAR FEET OF PRIVATE SANITARY SEWER MAIN TO EXISTING SANITARY SEWER MAINLINE. PIPE MATERIAL TO BE 18" NON-FERROUS CLASS 8 DIPS 200-11 HOPE OR APPROVED EQUAL. SEE SHEET C1.2 FOR PROFILE.
 - 11 INSTALL SANITARY SEWER MAINLINE PER CITY OF OAKLAND STANDARD DRAWING D-11.
 - 12 INSTALL STANDARD CITY OF OAKLAND BURNING CLEANOUT & BURNER PREVENTER, TYP.
 - 13 SAWCUT & REMOVE 2" (MIN) WIDE EXISTING ASPHALT CONCRETE PAVEMENT AND BASECOURSE. INSTALL FULL DEPTH ASPHALT CONCRETE (8" MIN).
 - 14 SAWCUT AND REMOVE A PORTION OF EXISTING CONCRETE BUS PAD & CONCRETE CURB ALONG PROJECT FRONTAGE. INSTALL NEW CONCRETE BUS PAD & CONCRETE CURB REFLECTOR IN BOARD & MATCH EXISTING BUS PAD THICKNESS, EIT SHALL REMAIN CONCRETE FINISH, ETC. REFER TO CALTRANS STANDARD DRAWING PG.

Provide clear street width.
PX 15000 29 permit is Expired
Renew the permit is required.

- Legend for symbols:
- DL - STORM DRAIN MAINLINE
 - DL - STREET LIGHT
 - DLB - SINGLE LIGHT BOX
 - DL - SANITARY SEWER
 - DL - SANITARY SEWER MAINLINE
 - DL - SIDEWALK
 - DL - TRAFFIC LIGHT
 - DL - TOP OF CURB
 - DL - TELEPHONE
 - DL - TRAFFIC SIGNAL
 - DL - WATER
 - DL - WATER VALVE

DESIGNER'S STATEMENT

I, the undersigned, hereby certify that I am a duly licensed Professional Engineer in the State of California, and that I am the Designer of the above described project. I hereby certify that the design of the project is in accordance with the California Engineering Law and the rules and regulations of the State Board of Engineers, and that the design is based on the information furnished to me by the client and other sources, and that I have not been furnished with any information that would cause me to believe that the design is not in accordance with the California Engineering Law and the rules and regulations of the State Board of Engineers.



<p>DESIGNER KISTER, SAVO & REL, INC. LAND SURVEYORS & CIVIL ENGINEERS 1000 SAN PABLO AVENUE SAN PABLO, CALIFORNIA 94866 PHONE (925) 436-1111 FAX (925) 436-1112 WWW.KSRI.COM</p>	<p>DATE: 12/15/10 BY: K. J. KISTER CHECKED: J. SAVO DATE: 12/15/10</p>	<p>PROJECT CIVIL IMPROVEMENT PLAN PUBLIC IMPROVEMENTS PROJECT: 15000 29 TRACT: 15000 29</p>
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C1.0

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

EXHIBIT B

**City of Oakland
Department of Transportation
Dalziel Administration Building
250 Frank H. Ogawa Plaza – 4th Floor
Oakland, CA 94612
Attention: City Engineer**

This document is exempt from payment
of a recording fee pursuant to California
Government Code section 27383.

SPACE ABOVE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

5300 and 5310 San Pablo Avenue

Final Map No. 8161

This SUBDIVISION IMPROVEMENT AGREEMENT (“**Agreement**”), dated as of _____, 2017 (“**Effective Date**”), is entered into by and between the City of Oakland, a California municipal corporation (“**CITY**”), and 53rd Street/San Pablo Avenue, LLC, a California limited liability company (“**SUBDIVIDER**”), with reference to the following facts and circumstances:

RECITALS

A. The SUBDIVIDER has presented a Final Map of the development to the City, identified as Final Map No. 8161, of a proposed subdivision of three (3) developable lots and four (4) additional parcels located within the corporate limits of the CITY, which are identified by the Alameda County Assessor as parcel numbers 013-1186-013-02 and 013-1186-013-03, and by the CITY as 5300 and 5310 San Pablo Avenue.

B. The Final Map has been prepared in accordance with the Subdivision Map Act of the State of California, the subdivision ordinances of the CITY, and the vesting tentative tract map of the subdivision previously approved by the City Planning Commission and the City Council.

C. As a condition precedent to the CITY's approval of the proposed Final Map, the CITY requires the irrevocable dedication of public right-of-way and public easements shown on the proposed Final Map. In addition, the CITY requires the construction of public infrastructure improvements to be located off-site in the CITY right-of-way and on-site in dedicated right-of-

way and public easements that customarily include, but are not limited to, grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto (collectively, the “**Public Infrastructure Improvements**”).

D. The SUBDIVIDER has asked the CITY and local public utility companies to accept the ownership and permanent maintenance of the applicable required Public Infrastructure Improvements.

E. The required Public Infrastructure Improvements have not been completed or accepted by the CITY. Consequently and in consideration of the approval of the Final Map and acceptance of the irrevocable offers of dedication of public right-of-way and public easements and acceptance of the ownership and permanent maintenance of the required Public Infrastructure Improvements to be owned and operated by the City, the parties desire to establish an Agreement binding the SUBDIVIDER to complete the required Public Infrastructure Improvements pursuant to the terms and conditions set forth herein.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CITY and the SUBDIVIDER agree as follows:

1. Approval of Final Map

Approval of the Final Map by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Recorder, as well as SUBDIVIDER’s satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Public Infrastructure Improvements

The SUBDIVIDER shall construct all required Public Infrastructure Improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in Section 3, Special Conditions.

3. Special Conditions

The SUBDIVIDER shall comply with the special conditions as follows:

A. The Public Infrastructure Improvements shall conform to the performance criteria specified in Oakland Municipal Code Chapter 16.16 – Design Standards and in Standard Details for Public Works Construction and Standard Specifications for Public Works Construction, current editions.

B. The time duration for the completion of the required Public Infrastructure

Improvements, as set forth in Section 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten years.

C. All construction activities related to the required Public Infrastructure Improvements (including, without limitation, hours, days, and months of operation and control of public nuisance conditions) shall conform to the requirements of all CITY Conditions of Approval for the project, the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11 and the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (“SCAMMRP”) approved by the City Council on January 20, 2009.

D. Performance standards for the construction of the required Public Infrastructure Improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for “Best Management Practices” for erosion and sedimentation control, including a California Construction General Permit with a Storm Water Pollution Prevention Plan (SWPPP – “C6”) provided by a Qualified SWPPP Developer (QSD) and monitored by a Qualified SWPPP Practitioner (QSP).

E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Public Infrastructure Improvements

A. All construction of the required Public Infrastructure Improvements shown in *Exhibit A* shall be completed by the SUBDIVIDER within one (1) year of the Effective Date of this Agreement, except those required improvements for which another completion date is stated in *Exhibit A*. Construction of the required Public Infrastructure Improvements shall not be deemed complete until an unconditional Certificate of Completion, signed and stamped by the SUBDIVIDER’s engineer, has been received by the CITY and an unconditional certificate of completion confirming that the subject improvements are ready for their intended use and have been completed substantially in accordance with *Exhibit B* (a “**Certificate of Completion**”) has been issued by the City Engineer.

B. The City Engineer may extend the time for completion of the required Public Infrastructure Improvements upon demonstration of good cause. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle the SUBDIVIDER to an extension under this Section 4B.

C. An extension may be granted without notice to the SUBDIVIDER’s surety, and extensions so granted shall not relieve the surety’s liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, the SUBDIVIDER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or

provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure the SUBDIVIDER's performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Public Infrastructure Improvements

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise.

6. Responsibility for Public Infrastructure Improvements

Until the Certificate of Completion is unconditionally issued, the SUBDIVIDER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication, and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the SUBDIVIDER until such time as the Certificate of Completion is unconditionally issued.

7. Maintenance of Public Infrastructure Improvements

Until two (2) years have elapsed following the unconditional issuance of the Certificate of Completion, the SUBDIVIDER shall maintain the construction of the Public Infrastructure Improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until two (2) years have elapsed following the unconditional issuance of the Certificate of Completion, the SUBDIVIDER warrants that the Public Infrastructure Improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in Section 3, Special Conditions. The SUBDIVIDER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in Section 3, Special Conditions.

If at any time before the expiration of the guarantee and warranty period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the SUBDIVIDER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the SUBDIVIDER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the SUBDIVIDER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the required Public Infrastructure Improvements for permanent maintenance, the SUBDIVIDER shall pay all fees and penalties and accrued interest to the CITY and other public agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from the date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the SUBDIVIDER fails to perform its obligations under this Agreement, the SUBDIVIDER consents to the reversion to acreage of the land that is the subject of this Agreement pursuant to Government Code section 66499.16, and to bear all applicable costs.

12. Property Acquisition

If the SUBDIVIDER is unable to acquire property required for the construction of required improvements, the SUBDIVIDER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The SUBDIVIDER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than Four Million Three Hundred Eleven Thousand and Eighteen Dollars (**\$68,701.00**), which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure faithful performance of this Agreement by the SUBDIVIDER; and

2. Labor and Materials Bond in a face amount not less than Two Million One Hundred Fifty Five Thousand and Five Hundred Nine Dollars (**\$34,350.50**), which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure payment by the SUBDIVIDER to its contractor, subcontractors, laborers and material suppliers furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

The Faithful Performance Bond and the Labor and Materials Bond shall not be limited in duration nor stipulate a date of expiration and shall remain in effect until the unconditional issuance of the Certificate of Completion of the required Public Infrastructure Improvements.

B. Before final approval of the Public Infrastructure Improvements, the following security shall be presented:

Maintenance Bond in a face amount not less than One Million Seventy Seven Thousand Seven Hundred Fifty Five Dollars (**\$17,175.25**), which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required Public Infrastructure Improvements, to secure faithful performance of Sections 7, Maintenance of Public Infrastructure Improvements, and 8, Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise, above. This Maintenance Bond shall remain in effect for not less than two (2) years after the date of the unconditional issuance of the Certificate of Completion of the required Public Infrastructure Improvements.

C. Pursuant to Government Code section 66499.7, upon request by the SUBDIVIDER, the CITY may elect to partially release the security required under Section 13(A) when the cost of the completed Public Infrastructure Improvements (based on the original engineer's estimates) equals eighty percent (80%) of the original bond amount. As a condition to such partial release, the SUBDIVIDER will provide a performance and completion surety bond to the CITY in an amount equal to two hundred percent (200%) of the cost estimate of the remaining work, in a form satisfactory to the City Attorney.

Reduction of the security pursuant to the above does not, and shall not be deemed to be, an acceptance by the CITY of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the SUBDIVIDER until all required public improvements have been accepted by the CITY and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

D. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

E. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided, this Agreement shall be void.

14. Alternative Security

In lieu of the bonds required above in Section 13, Security, alternative securities may be substituted by the SUBDIVIDER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. Defense, Indemnity, and Hold Harmless

A. To the maximum extent permitted by law, the SUBDIVIDER shall defend (with counsel acceptable to the CITY), hold harmless, and indemnify the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers (collectively, the “City Parties”) from any and all liability, claims, demands, losses (direct or indirect), lawsuits, actions, causes of action, proceeding and judgments for injury and/or damages of any kind and nature whatsoever (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) arising out of, related to or caused by performance of this Agreement, including without limitation the design, construction and/or maintenance (for a period of two (2) years following unconditional issuance of the Certificate of Completion) of the Public Infrastructure Improvements, except for injuries and damages directly caused by the sole gross negligence of the City Parties. The CITY may elect, in its sole and absolute discretion, to participate in the defense of said Action, and the SUBDIVIDER shall reimburse the CITY for its reasonable legal costs and attorneys’ fees. Not in limitation of the foregoing, SUBDIVIDER further agrees to defend and protect the City Parties from all liability or claims because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

The SUBDIVIDER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement except claims and recourse arising directly from the sole gross negligence of the City Parties. This Defense, Indemnity, and Hold Harmless section shall survive the termination of this Agreement.

B. Within ten (10) calendar days of the filing of any Action as specified in subsection A above, SUBDIVIDER shall execute a Joint Defense Letter Agreement with the CITY, acceptable to the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment or invalidation of this Agreement. Failure to timely execute the Joint Defense Letter Agreement does not relieve SUBDIVIDER of any of the obligations contained in this Agreement or other requirements that may be imposed by the CITY.

16. Insurance Required

The SUBDIVIDER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the SUBDIVIDER and his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 “any auto.”
3. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. **Commercial General Liability** insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

2. **Automobile Liability** with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.

3. **Worker’s Compensation** insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The SUBDIVIDER certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers’ Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The SUBDIVIDER shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

4. **Professional Liability/Errors/Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders’ Risk/Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. 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:

1. The insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City Parties; or
2. The SUBDIVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The City Parties are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the SUBDIVIDER, products and completed operations of the SUBDIVIDER; premises owned, occupied or used by the SUBDIVIDER, or automobiles owned, leased, hired or borrowed by the SUBDIVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the City Parties.
2. The SUBDIVIDER's insurance coverage shall be primary insurance as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of the SUBDIVIDER's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the City Parties.
4. The SUBDIVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The insurer shall agree to waive all rights of subrogation against the City Parties for losses arising from work performed by the SUBDIVIDER for the CITY.
6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

The SUBDIVIDER shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The SUBDIVIDER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

The SUBDIVIDER shall participate in all Benefit Districts formed by the CITY prior to the execution of this Agreement and shall pay the prorated fee due the CITY under the terms of Benefit District or Districts as applied to the real property covered by this Agreement.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Final Map – Phase 2, which land is expressly agreed to benefit from the privileges granted to SUBDIVIDER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of SUBDIVIDER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

CITY Permits:

a) Land Use CDV13267, b) Public Infrastructure PX1500029 and c) Tract Map TR8161.

Subdivision: Final Map No. 8395 (Phase 2)

City Engineer's Estimate of the Cost of Improvements: Preliminary Opinion of Probable Construction Costs 5300 and 5310 San Pablo Avenue Improvements, prepared by Mathew L. Rei, P.E., Kister, Savio & Rei Inc., Land Surveyors and Civil Engineers, dated 01/18/15.

Insurer: _____

Surety: _____

21. Constructive Notice

This Agreement shall be filed for recordation in the Official Records of Alameda County within five (5) calendar days following execution by the CITY.

22. Effective Date

This Agreement shall be effective on the Effective Date.

23. Miscellaneous

A. Counterparts. This Agreement may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

B. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts within the County of Alameda, State of California.

C. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Agreement.

D. Further Assurances. The CITY and the SUBDIVIDER shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the CITY and SUBDIVIDER have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

CITY:

AUTHORIZED BY RESOLUTION NO.
_____ C.M.S.

CITY OF OAKLAND, a municipal corporation

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By: _____
SABRINA B. LANDRETH
CITY ADMINISTRATOR

SUBDIVIDER*:

53RD STREET/SAN PABLO AVENUE,
LLC

By: _____
Name: Tommy Casey
Title: Authorized Individual

*Notarized acknowledgment required.

Exhibit A

**Engineer's Cost Estimate
Permit Number PX1500029**

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS



MATTHEW L. REI, PRES.
R.C.E. 39863 - L.S. 7115

DONALD E. KISTER (1905-1968)

CHARLES J. SAVIO (1921-2006)

PATRICK M. REI, V.P.
L.S. 8178

MICHAEL P. REI (Retired)

3095 RICHMOND PARKWAY
SUITE 214
RICHMOND, CA 94806
PHONE (510) 222 - 4020
FAX (510) 222 - 3718
E-MAIL info@ksrinc.net

January 18, 2015
Job No. 19566

ENGINEER'S ESTIMATE FOR 53rd STREET PUBLIC RIGHT OF WAY IMPROVEMENTS
TRACT 8161
P-JOB PERMIT #PX1500029

	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
<u>PUBLIC ROAD INFRASTRUCTURE</u>				
1) REMOVE EXISTING CONC. CURB, GUTTER, SIDEWALK, DRIVEWAY & A.C.	1,545	S.F.	1.00	\$1,545.00
2) FINISH GRADING	1,545	S.F.	1.00	1,545.00
3) OAKLAND TYPE "A" CURB & GUTTER	130	L.F.	50.00	6,500.00
4) GRIND & REPLACE 2" A.C. PAVEMENT	1,350	S.F.	5.00	6,750.00
5) CONCRETE DRIVEWAY	195	S.F.	10.00	1,950.00
6) CONCRETE SIDEWALK	645	S.F.	10.00	6,450.00
7) 8" SANITARY SEWER MAIN	127.50	L.F.	100.00	12,750.00
8) SANITARY SEWER CLEANOUT	1	EA.	1,500.00	1,500.00
9) SANITARY SEWER MANHOLE	1	EA.	6,000.00	6,000.00
10) STREET TREES & TREE GRATES	6	EA.	1,250.00	7,500.00
11) 2' WIDE FULL DEPTH A.C. PAVEMENT	258	L.F.	25.00	6,450.00
12) 3" x 12" SIDEWALK UNDERDRAIN	8	EA.	100.00	800.00
		SUB-TOTAL		59,740.00
		15% CONTINGENCY		<u>8,961.00</u>
		TOTAL		\$ 68,701.00

Matthew L. Rei 1/16/17
MATTHEW L. REI **DATE**
R.C.E. 39863
EXPIRATION DATE 12/31/17



SAMPLE CERTIFICATE OF COMPLETION

Date: _____

Department of Transportation
Right-of-Way Management, Engineering Services
250 Frank Ogawa Plaza, 4th Floor, Suite 4314
Oakland, CA 94612

Attention: City Engineer

Subject: Certificate of Completion

Reference: Project Name _____

Address _____

Permit No. _____

As the Engineer-in-charge of the project referenced above, I certify that all publicly and privately maintained infrastructure improvement work for the subject project has been completed in conformance with the approved plans and specification (OMC 15.04.660 Section 1805B.1 & OMC 12.20.030), and any changes which have been authorized by me and approved by the City of Oakland.

Signed: _____

Seal:

Attachments