

REEDLEY CITY COUNCIL

- Consent
- Regular Item
- Workshop
- Closed Session
- Public Hearing

ITEM NO: 15

DATE: December 10, 2019

TITLE: ADOPT RESOLUTION NO. 2019-106 APPROVING THE SUBDIVISION MAP IMPROVEMENT AGREEMENT AND FINAL MAP FOR PHASE TWO OF TENTATIVE SUBDIVISION MAP 6206 (ALMOND GROVE)

SUBMITTED: Rob Terry, AICP *RT*
Community Development Director

APPROVED: Nicole R. Zieba
City Manager *NZ*

RECOMMENDATION

Adopt Resolution No. 2019-106, Approving the Phase Two Final Map for Tentative Subdivision Map 6206 (Almond Grove), and authorizing the City Manager to make non-substantive changes to the attached draft agreement and sign final agreement with Yanez Construction regarding a Subdivision Improvement Agreement for the aforementioned phase.

EXECUTIVE SUMMARY

The owner of Tentative Subdivision Map 6206 (Almond Grove) is requesting the City Council approve the final map for Phase Two associated with the project in accordance with Reedley Municipal Code 11-2-13, and approve entering into an Subdivision Improvement Agreement for timely completion of the public facilities associated with serving Phase Two, in accordance with Reedley Municipal Code sections 11-2-11 and 11-2-19.

BACKGROUND

Almond Grove (Tract 6206) was approved by the Reedley Planning Commission on December 14, 2017; consisting of the development of 45 single-family residential units on 9.98 gross acres of land. Currently, the developer is currently building units associated with Phase One, with said final map and associated improvement agreement having been approved by the Reedley City Council on May 14, 2019. At this time, the developer has submitted a final map for Phase Two of the project site for the City's approval in accordance with Reedley Municipal Code section 11-2-13. The City Surveyor and staff have reviewed the Phase Two final map submission for conformance to boundaries, public easement locations, dedications, closure calculations and other required information. The Community

Development Director has consequently found the map to be in substantial compliance to the tentative map approval, with engineering staff having determined that the improvements required for Phase Two have been properly identified. As such, staff submits said map to the Council for their approval consideration.

In regards to the completion of public improvements associated with Tentative Subdivision Map 6206 (Almond Grove), the developer has requested to enter into a Subdivision Map Improvement Agreement (Attachment 2) for Phase Two of the development with the City of Reedley, as authorized by Reedley Municipal Code section 11-2-11, similar to actions taken for Phase One. This action will allow for the filing of a final map for Phase One of the development (lots 19 through 45 of the total 45 approved) with the assurance that outstanding site improvements and activities identified within the project's conditions of approval will be completed within a given timeframe acceptable to the City; secured by surety bond and other specifications. Council may approve, approve with conditions, or disapprove the agreement. The developer may also continue on-site work of public improvements associated with Phase One of the project, in accordance with the agreement already in place.

The developer has already provided signed initiation documentation associated with annexation into both the LLMD and CFD, as required within the agreement prior to final map recordation.

FISCAL IMPACT

All fees associated with the processing of Tentative Subdivision Map 6206 (Almond Grove) were paid prior to Planning Commission action. Phase Two of Final Map and Subdivision Improvement Agreement fees were paid by the applicant prior to Council actions.

PRIOR COUNCIL ACTIONS

On January 22, 2019, Council approved a Partial Reimbursement Agreement related to the construction of Tentative Subdivision Map 6206 (Almond Grove), as the developer agreed to upsize and extend sewer, water and street improvements to implement the City's Integrated Master Plan (adopted by Council on June 24, 2014 via Resolution 2014-059). Phase One Final Map and the related Subdivision Improvement Agreement were approved by the City Council on May 14, 2019.

ATTACHMENTS

1. Resolution No. 2019-106
2. Draft Subdivision Improvement Agreement for Phase Two of Tentative Subdivision Map 6206 (Almond Grove)
3. Phase Two Final Map – Tentative Subdivision Map 6206 (Almond Grove)

Motion: _____

Second: _____

Recorded by and for the
benefit of, and When
Recorded Mail to:

City of Reedley
Community Development Department
1733 9th Street
Reedley, CA 93654

Exempt from recording fees – Gov. Code Section 27383 SPACE ABOVE THIS LINE FOR RECORDER’S USE

**SUBDIVISION IMPROVEMENT AGREEMENT FOR PHASE TWO OF TENTATIVE
SUBDIVISION MAP 6206 (ALMOND GROVE)**

This Subdivision Improvement Agreement (“Agreement”) is made and entered into effective on Dec. 19TH, 2019 (“Effective Date”), by and between the City of Reedley, a municipal corporation, hereinafter referred to as “City” and EFRAIN YANEZ CONSTRUCTION, INC, a California Corporation, hereinafter referred to as “Subdivider”.

RECITALS

WHEREAS, Subdivider is engaged in subdividing that certain tract of land known and designated as Tentative Subdivision Map 6206 (Almond Grove), situated in the City of Reedley, County of Fresno, State of California; and

WHEREAS, a final map for Phase 2 of said Tentative Subdivision Map 6206 (TSM 6206), has been filed with the City Clerk of the City of Reedley for presentation to the City Council for its approval, which map is hereby referred to and by such reference incorporated herein; and

WHEREAS, the City requires, as a condition precedent to the acceptance and approval of said final map, the dedication of such rights of way for streets, public places, and easements as are delineated and shown on said final map, and deems the same as necessary for the public use, and also requires that any and all rights of way for streets, public places, and easements delineated and shown on said final map shall be improved by the construction and the installation of the improvements hereinafter specified; and

WHEREAS, Section 11-2-11 of the Reedley Municipal Code allows, as a condition to City’s approval of the final subdivision map, for the City to require Subdivider to enter into a subdivision improvement agreement which provides for the Subdivider to complete improvements within a reasonable time following approval of the final map.

NOW, THEREFORE, in consideration of the foregoing recitals which are a substantive part of this Agreement, Subdivider and the City do hereby mutually agree as follows:

AGREEMENT

1. Subdivider shall, at its own cost and expense, construct all of the improvements, furnish all the materials and do all the work herein above hereinafter mentioned, all in accordance with the Standard Specifications of the City, and in accordance with and to the extent provided in those certain plans entitled "Improvement Plans for Almond Grove (Tentative Subdivision Map 6206)" prepared by AW Engineering, approved by the City Engineer and by the City Council by Resolution No. 2019-106 and now on file in the office of the said City Engineer ("the Plans"), to which Plans reference is hereby made, and the same are hereby adopted and incorporated herein the same as if fully set forth herein verbatim, and in compliance with the provisions of Title's 8 and 11 of the Reedley Municipal Code relating to regulations and standards for the subdivision of land in said City and for the preparation and presentation of subdivision maps therefor and in accordance with the listed items set forth on the Engineer's Estimate "Preliminary Engineer's Cost Estimate for Almond Grove – Phase 2" dated December 4, 2019 attached hereto and made a part hereof as Exhibit "A". Subdivider hereby agrees that the improvements required to be installed as set forth herein are necessary and will materially benefit the property within the Tract and shall complete the same no later than one (1) year from the Effective Date of this Agreement. Prior to recordation of the final map, Subdivider shall (i) petition and request that the City annex the TSM 6206 area into City's Landscape, Lighting and Maintenance District, Zone Z ("LLMD"), for the maintenance and operation of landscaping facilities, and (ii) petition and request that the City annex the TSM 6206 area into the City's Community Facilities District No. 2005-1 ("CFD") for the maintenance and operation of public services and facilities. Annexation of the property comprising TSM 6206 into both the City's LLMD and CFD is a condition precedent to the City's obligation to issue a building permit for development or improvement of any parcel within TSM 6206, and Subdivider acknowledges and agrees that if this property were not part of the CFD, the City might lack the financial resources to operate facilities and provide adequate public services to the property.

The Subdivider shall provide on-site improvements subject to review and approval of the City of Reedley. For purposes of this agreement, the term "improvements" shall mean only improvements in the public rights-of-way easements and property for streets, sidewalks, storm drains, sewer mains, water mains, landscaping, utilities and related facilities.

The Subdivider shall install all improvements specified in the Plans. In addition to said improvements, Subdivider shall install all improvements required by and otherwise comply with the Conditions of Approval adopted by the Reedley Planning Commission by Resolution No. 2017-14.

2. Any work required under this Agreement and not mentioned in the above-described Plans and specifications shall be constructed in accordance with the Standard Specifications of the City of

Reedley. If the City has no Standard Specifications for any of said work, it is agreed that the same shall be done and performed in accordance with the most current "Standard Specifications of the State of California, Division of Highways". All of said work, improvements and materials shall be completed, performed and installed under the supervision of and to the satisfaction of the City Engineer of the City of Reedley.

3. Subdivider shall provide for the installation of all gas, electric, telephone, Cable T.V., private irrigation pipelines and other public utility lines and facilities and shall grant easements therefor. All underground utilities and improvements in streets and alleys shall be installed before surfacing of said streets and alleys. The Subdivider shall comply with all requirements of Title 11 of the Reedley Municipal Code concerning installation of Cable T.V. lines and facilities, and shall give all notices required by that title.

4. Prior to the approval of said final map by the City Council, and as a condition precedent to the recordation thereof, and in order to secure for the City the faithful performance by Subdivider of all work and the construction of all improvements mentioned in this Agreement including the placement of all monuments as per said final map, within the time herein specified, Subdivider shall furnish the following to the City:

- i. a good and sufficient surety bond or other security acceptable to City securing the faithful performance of all work and the construction of all improvements herein mentioned in this agreement within the time specified and in the sum of thirty-four thousand five-hundred dollars and zero cents (\$34,500.00); plus an amount for cost and reasonable expenses and fees, including reasonable attorney's fees incurred by the City to enforce the secured obligation; and
- ii. a good and sufficient surety bond or other security acceptable to City securing the payment by Subdivider of all bills for labor, work and materials incurred in the construction of all said improvements and the performance of all work herein agreed to be done by said Subdivider, and amounts due under the Unemployment Insurance Act with respect to such work or labor, the amount of said bond to be seventeen-thousand two-hundred fifty dollars and zero cents (\$17,250.00), plus an amount for cost and reasonable expenses and fees, including reasonable attorney's fees incurred by the City to enforce the secured obligation.

Before acceptance of the subdivision improvements and the release of the faithful performance bond and the labor and materials bond, the Subdivider shall file with the City Clerk a surety bond or other security acceptable to the City to guarantee the repair of any of the improvements which may be found to be defective in work, labor, or materials within one (1) year after the written acceptance of the

improvements by the City. Said Security shall be for three-thousand four-hundred and fifty dollars and zero cents (\$3,450.00), plus an amount for cost and reasonable expenses and fees, including reasonable attorney's fees incurred by the City to enforce the secured obligation; and

All bonds required by this section shall be issued by a corporate surety authorized to do surety business in California and shall be on forms acceptable to the City.

5. The Subdivider shall protect, indemnify, and hold harmless the City of Reedley, its officers, employees and volunteers thereof from any and all liability or claims (in contract, tort, strict liability or otherwise, including but not limited to personal injury, death at any time or property damage), because of or arising out of Subdivider's performance of this Agreement, or out of, any accident, occurrence, loss, damage or happening occurring upon or arising out of the construction of any of the improvements herein or the use by any person of any patent or patented articles in the construction of said work or improvements. The forgoing obligations shall survive completion or termination of this Agreement. The Subdivider agrees that the use of any and all streets and improvements herein above specified shall be, at all times prior to the final acceptance of said improvements by the City Council, the sole and exclusive risk of the Subdivider. The issuance of any occupancy permits by City for dwellings located within the said subdivision shall not be construed in any manner to be an acceptance and approval of any or all of said streets and/or improvements in said subdivision.

6. Subdivider, before commencing work pursuant to this Agreement, shall obtain and maintain in full force and effect during the performance of the work at his own expense and risk, policies of insurance as follows and shall furnish evidence of such insurance by filing a certificate of insurance with the City Clerk. Such insurance shall name the City of Reedley, its Council, officers, officials, employees and volunteers as insured or additional insureds, and shall indemnify the City and said persons against liability for loss or damage for personal injury including death, and property damage occasioned by the operations of the Subdivider or its employees, contractors or subcontractors under the terms of this agreement in the minimum limits as follows:

- i.
 - a) **General Liability.** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - b) **Automobile Liability.** \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - c) **Worker's Compensation and Employer's Liability.** Worker's

compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.

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

a) General Liability and Automobile Liability Coverages.

i) The City, its officers, officials, employees and volunteers are to be covered as insureds 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, its officers, officials, employees, or volunteers.

ii) The Subdivider'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 excess of the Subdivider's insurance and shall not contribute with it.

iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

iv) 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.

b) Worker's Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Subdivider under this agreement.

c) All Coverages. Each insurance policy required by this clause shall be issued by a corporate insurer authorized to do insurance business in California and shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. Such notice requirement shall not contain "shall endeavor", "best efforts" or similar qualifiers.

iii. Verification of Coverage. 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. Where by statute the City's worker's compensation-related forms cannot be used, equivalent forms approved by the Insurance Commissioner are to be substituted. 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. If such insurance is provided in either case by a policy or certificate which covers the Subdivider or other entity or person than the City of Reedley, such policy shall contain the standard form of cross liability endorsement. Such insurance shall also specifically insure contractual liability assumed by Subdivider under the terms of this agreement.

7. Time is of the essence of this Agreement; provided, however, that in the event good cause is shown therefor to the City by Subdivider, City may extend the time in which the aforementioned improvements may be made and completed under this agreement. Said extensions of time, if any, may be granted without notice to the surety and any extensions so granted shall not relieve the surety bond or other security deposited with the City given to secure Subdivider's performance under this agreement. City shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension of time hereunder.

8. All pipes and monuments shown on the final map hereinafter referred to which are destroyed or displaced during construction operations shall be replaced by Subdivider by the time of the final inspection of the improvements hereunder by the City.

9. It is agreed that title and ownership of any improvements constructed hereunder by Subdivider shall vest absolutely in City upon completion and acceptance of such improvements by the City Council.

10. It is mutually understood and agreed that neither Subdivider nor any of its agents, employees or contractors are or shall be considered to be agents of the City of Reedley in connection with the performance of Subdivider's obligations under this agreement.

11. Subdivider shall pay to the City, for all engineering, inspection and other services provided by City in accordance with this Subdivision, amounts as set forth by adopted City ordinance and resolution in effect at time of payment. City shall, at the completion of the improvements provided for herein, furnish the Subdivider with a statement of all charges for services performed by the City in the event said actual costs exceed the payment previously made by Subdivider for such services. The Subdivider shall complete payment for such charges within thirty (30) days after receipt of such statement of actual costs.

12. Subdivider agrees that if, within a period of one (1) year after final acceptance of the work done under this Agreement, any improvements or part of any improvement furnished and/or installed or

constructed or caused to be constructed by Subdivider, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the Plans and other plans and specifications referred to herein, Subdivider shall, without delay and without any cost to the City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or improvements. The terms of this section shall not apply to any damage caused by acts of God. Should Subdivider fail to act promptly or in accordance with this requirement, or fail to do the construction as agreed upon herein, or should the exigencies of the case require repairs or replacements to be made before the Subdivider can be notified, the City may, at its option, make the necessary repairs or replacements or perform the necessary work and the Subdivider shall pay to the City the actual cost of such repairs plus thirty percent (30%) to cover the City's indirect and overhead costs. If the Subdivider fails to pay to the City the cost repairs plus thirty percent (30%), the City may, without limiting the Subdivider's liability therefor, file a claim against the bond posted to guarantee and warrant the work.

13. The Subdivider and his contractors shall pay when due for any materials, wages, subcontracts, labor, provisions, or other supplies and items used in conjunction with the work performed for the subject subdivision including, but not limited to, unemployment insurance and any other incidentals arising out of any necessary work or labor.

14. The Subdivider shall comply with all Street, Plumbing, Building, Electrical, Zoning Codes and any other applicable Codes, ordinances, standards and regulations of the City. Subdivider shall submit the proposed conditions, covenants, and restrictions to sales of lots within this subdivision to the City of Reedley for review and approval prior to any execution thereof.

15. If Subdivider fails to construct the improvements upon the terms and within the time required, City may complete or cause completion of the required improvements and assess the actual cost of completing the required improvements and file a claim against the bond posted to secure faithful performance of the works.

16. When the improvements are completely installed and accepted by the City Council and there is full performance pursuant to this agreement, City agrees to release Subdivider and the described property from further obligation under this Agreement, except for those obligations, including but not limited to Section 6 and 13, that by their nature continue after termination or completion of this Agreement.

17. All covenants in this Agreement shall pertain to and run with the described real property and shall apply to, bind, and inure to the parties and the contractors, heirs, executors, administrators, assigns or successors in interest of the respective parties hereto.

18. Any notice required by law or by this Agreement shall be given by personal delivery of first class U.S. Mail. Notice by personal delivery will be effective on delivery and notice by mail will be considered effective three days after it is deposited in the U.S. Mail, postage paid, addressed to the City of Reedley,

1733 Ninth Street, Reedley, CA 93654 or to Subdivider, Efrain Yanez Construction, Inc., 42931 Rd. 52 Reedley, CA 93654, at their respective addresses as of the date of this Agreement, unless written notice of change or address has been received by the other party. If any action is required to enforce the provisions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees to be determined by a Court.

19. The Subdivider shall have a record drawing prepared by a civil engineer which denotes the final disposition of the improvements as constructed for water, sewer, storm drain, curb and gutter, and streets. Said "as-built" drawing shall be prepared and submitted to, and approved by, the City Engineer prior to the City Council's acceptance of the improvements.

IN WITNESS WHEREOF, the parties have signed this agreement to be effective as of the Effective Date in the opening paragraph.

CITY OF REEDLEY, a municipal corporation

EFRAIN YANEZ CONSTRUCTION, INC.,
a California Corporation

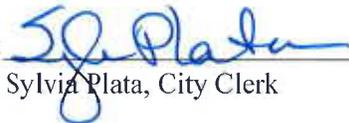
BY: 

Nicole R. Zieba, City Manager
(Notary Acknowledgement to be Attached)

BY: 

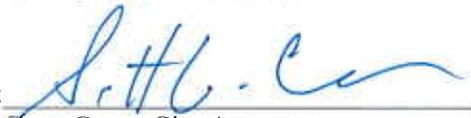
Efrain Yanez, Owner/President
(Notary Acknowledgement to be Attached)

ATTEST:

BY: 

Sylvia Plata, City Clerk

APPROVED AS TO FORM:

BY: 

Scott Cross, City Attorney

RECOMMEND APPROVAL:

BY: 

Rob Terry,
Community Development Director

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Fresno)

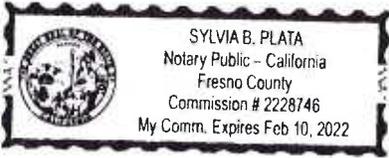
On December 19, 2019 before me, Sylvia B. Plata, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Efrain Yanez
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 Sylvia B. Plata
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Subdivision Imp. Agreement Document Date: 12-19-19
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

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

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

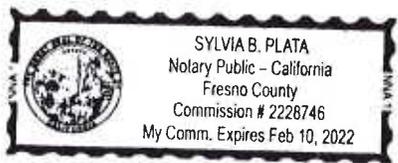
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Fresno

On January 14, 2020 before me, Sylvia B. Plata, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Nicole R. Zieba
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 Sylvia B Plata
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Subdivision Improvement Agreement

Document Date: 12.19.2019 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____

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 Corporate Officer – Title(s): _____
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer is Representing: _____