



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2020-01512

April 13, 2021

Consent Item 06

Title: Greenbriar Pavement Overwidth Reimbursement Agreement [Published for 10-Day Review 04/01/2021]

Location: Greenbriar/Northlake Community, District 1

Recommendation: Pass a Motion approving a reimbursement agreement to provide \$3,435,086 in construction excise tax credits for pavement overwidth to Greenbriar development.

Contact: Lucinda Willcox, Program Manager, (916) 808-5052; Ryan Moore, Director of Public Works, (916) 808-6629, Department of Public Works

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Overwidth Reimbursement Agreement
- 3-Greenbriar Roadway Map
- 4-Excerpt from Greenbriar Finance Plan

Description/Analysis

Issue Detail: On May 30, 2017, the City Council adopted the Greenbriar Project (now known as Northlake) and related documents, including the Development Agreement and Finance Plan. This project encompasses 577 acres, 2,956 housing units and other non-residential and public uses.

The North Natomas Finance Plan (NNFP), adopted in 1995, defined an “Overwidth Reimbursement Program,” whereby developers were reimbursed for construction costs for that portion of roadways exceeding two lanes. This program was specifically defined in the NNFP but was never adopted as a citywide program. The overwidth program was funded through the Overwidth Capital Improvement Program (CIP), whereby the City dedicated funding as part of the annual budget into this program from the Major Street Construction Fund (Fund 2007) based on funding available after other City needs were met. Revenues from this fund derive from a Construction Excise Tax that is collected on all new development citywide as prescribed in Chapter 3.36 of the City Code. Note that the Construction Excise Tax is a general tax enacted in 1978, not a development impact fee. As it applied to the building valuation tables published by the International Conferences of Building Officials, which were superseded by the State Building Code in 2008, it is based on project valuation (construction costs) frozen at 2008 levels, meaning the tax is not increasing with inflation and its spending power is reduced every year.

According to the Greenbriar/Northlake applicants, the Greenbriar development intended to include a similar overwidth reimbursement program as is described in the North Natomas Finance Plan; however, there is no reference or definition of an overwidth reimbursement program in either the Greenbriar Development Agreement or Greenbriar Finance Plan, other than a single reference in one table of the Finance Plan (Attachment 3) that lists \$3,250,086 in overwidth reimbursement for “backbone infrastructure,” including Elkhorn Boulevard, Street 1 (Waterside Drive), and Meister Way.

Under provisions of the Greenbriar Development Agreement, “the City commits to making a good faith effort to adopt and implement the Development Fees and Public Financing Mechanisms as set out in the Financing Plan. . . .” As a result, City staff recommends providing for reimbursement of the \$3.25 million referenced in the Finance Plan, despite the lack of any program definition in the Greenbriar Finance Plan. In addition, staff recommends reimbursement of \$185,000 for soft costs related to the roadways. Note that rather than reimbursement, the applicants have requested credits against the tax rather than waiting until enough funding is collected for reimbursement – an option permitted under City Code section 3.36.010F. This would be the first time this approach has been used, as development in North Natomas has always waited for taxes to be collected prior to reimbursement. Staff agreed to

support this request; with the condition that a maximum of 60% of the tax be credited on each building permit so the City has some tax revenue coming in to address citywide needs.

Policy Considerations: Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements, and all agreements greater than \$1,000,000 shall be made available to the public at least ten (10) days prior to City Council action. This contract was published for 10-day review on April 1, 2021 as required.

Resolution 2020-0398, adopted by the City Council on December 8, 2020, provided that “in order to maximize available local transportation funding availability to leverage state and federal grant funds, when adopting new Finance Plans, the City will not include overwidth reimbursement to be paid for with Construction Excise Tax.” Since the Greenbriar Finance Plan was adopted prior to this action, it does not apply in this instance.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City Council approved program-level entitlements for the Greenbriar Development Project in 2008. As part of that process, on January 29, 2008, the City Council certified the EIR for the project and adopted the Mitigation Monitoring Program (Resolution No. 2008-053). On May 30, 2017, the City adopted an Addendum to the Final Environmental Impact Report and Mitigation Monitoring Plan for the Greenbriar development. Roadway construction subject to reimbursement under this agreement were covered under those environmental documents.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The developer will be constructing the roadway facilities in connection with the development. As the developer appeared to have an expectation of overwidth reimbursement, acting in good faith, staff recommends reimbursement in the amount of \$3,250,086 as included in Table 4 of the Finance Plan, plus an additional \$185,000 in soft costs.

Financial Considerations: Approval of the Reimbursement Agreement would provide for reduction in construction excise tax revenues until \$3,435,086 in credits from building permits

in Greenbriar (Northlake) have been used. This will result in a reduction in revenue that the City uses to support citywide transportation projects, primarily as leverage for state and federal grants. Based on construction estimates provided by the developer, tax revenues available for city transportation projects will be reduced by \$300,000 to \$800,000 a year for the next five to six years. This funding would have provided the City the opportunity to leverage \$8 to \$12 million in additional grant funds.

Administration of the tax credits by the Community Development Department will result in some administrative costs to track and implement the tax credit program; it is presumed these costs will be covered through building permit costs.

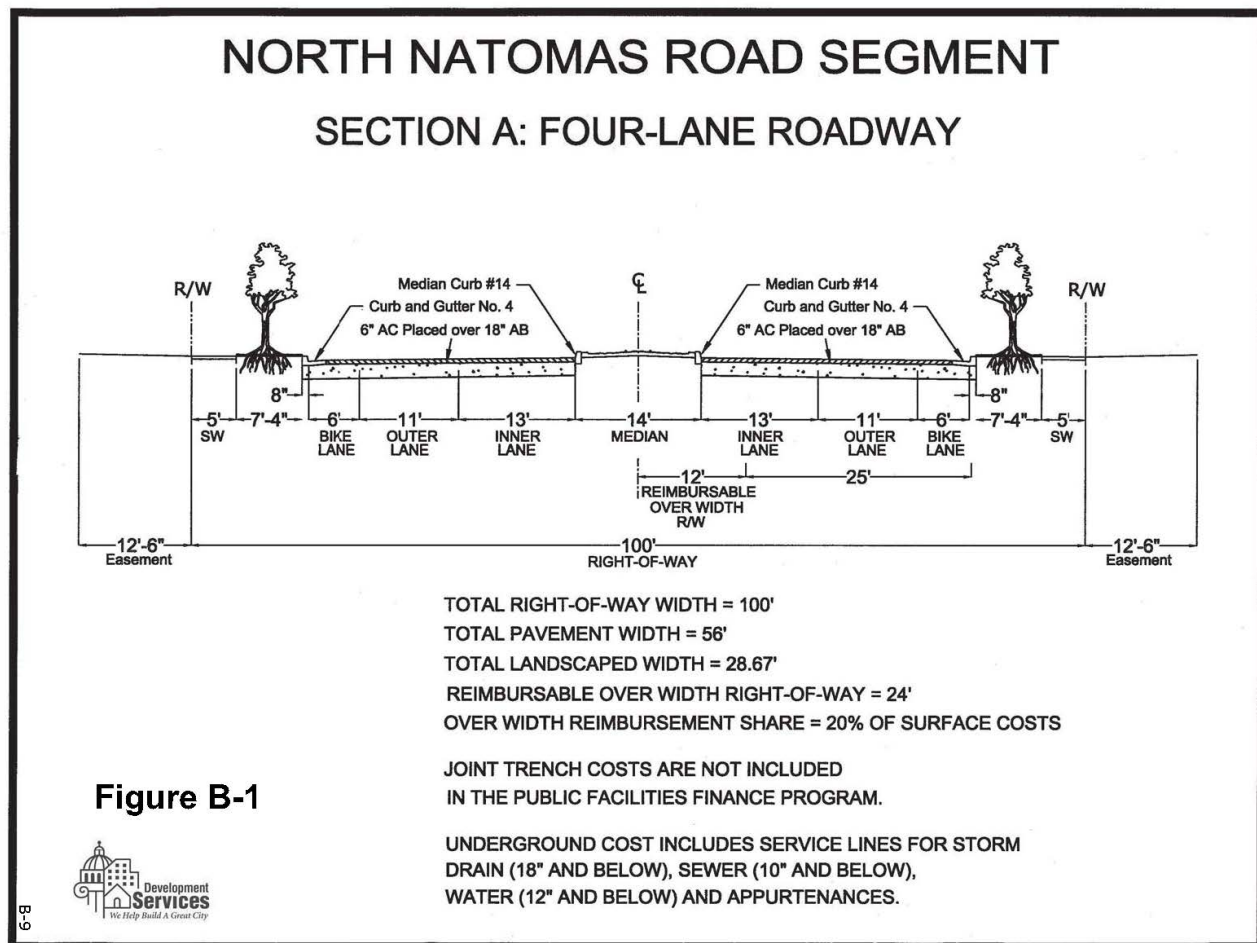
Local Business Enterprise (LBE): Not applicable.

Background: The Greenbriar Project (now known as Northlake) is located on approximately 577 acres of land in the northwestern most part of the city, west of I-5.

On May 30, 2017, the City Council approved various entitlements for the project to allow for the future development of 2,956± residential units (2,428± single-unit dwellings and 528± multi-unit dwellings), three commercial sites, open space/habitat buffers, open space/freeway buffers, six park sites, a community center, a lake/detention basin, a light rail station and park and-ride facility, school site, and various landscape corridors and related facilities. The City Council also approved adoption of an Addendum to the Final Environmental Impact Report (EIR) and Mitigation Monitoring Plan, the Development Agreement between the City of Sacramento and The Greenbriar Project Owner LP; and the 2017 Greenbriar Finance Plan.

Overwidth Pavement Reimbursement Program

The North Natomas Finance Plan (NNFP), adopted in 1995, included a program that provided for reimbursement for costs of roads when they exceeded two lanes in width, as illustrated through an excerpt from the Finance Plan as shown below.



To implement this requirement, as part of its preparation of the annual citywide capital improvement program (CIP), the City created an Overwidth Pavement Reimbursement Project and funded it with revenues from the Major Street Construction Fund after consideration of the funding needed for other City projects. The Major Street Construction Fund is funded by revenues from a Construction Excise Tax on building permits.

In 1978, in response to Proposition 13 limitations, the City established the Construction Excise Tax (Chapter 3.36 of the City Code). This is a tax (not an impact fee) on building permits intended to provide for construction of major streets. Under the Code, "all of the taxes are placed in the "major street construction fund" ... and shall be expended for the acquisition of land and interest in land for, and the construction, reconstruction, replacement, widening, modification, and alteration (but not for maintenance and repair), of existing and proposed streets in the city....."

There is a provision under the Code that allows the city to "enter into an agreement with the

person proposing the improvement for such person to accomplish the construction which would usually be funded by the major street construction fund using his or her own financing, to be reimbursed by the city when adequate funds become available in the major street construction fund. In lieu of payment of all or a portion of said tax, the city may enter into an agreement to grant a credit against such tax to any person who constructs improvements which would usually be paid from the major street construction fund." It appears to be this provision that resulted in the Overwidth Pavement Reimbursement Program as included in the North Natomas Plans in 1995.

Between 1996 and 2008, the City entered into overwidth reimbursement agreements for a cumulative total of \$13 million. The largest individual reimbursement was \$2.1 million; most were below \$1 million.

Since 2008, the City has not entered into any new overwidth reimbursement agreements. Several conditions have changed that affect continued implementation or expansion of an overwidth reimbursement program.

- During the recession and North Natomas flood moratorium, development drastically declined and there were no major new roadways constructed in North Natomas
- In 2009, the New Measure A program replaced the original Measure A program. Under the original program, Measure A provided \$10 to \$20 million annually in discretionary transportation capital funding. With the New Measure A program, the City receives \$2 to \$2.5 million in capital funding that is limited to bike/pedestrian and safety projects. As a result of reductions in discretionary funding, the Major Street Construction Fund is the primary source of funding to deliver City transportation priorities and is the primary source of local match that is required to leverage state and federal grants.
- With the adoption of a new building code, the Construction Excise Tax was frozen in 2008 values as it is linked to the former Building Code. As a result, this tax no longer rises with inflation, so its spending power decreases as construction costs escalate.
- In 2017, in response to lack of funding to address citywide and cumulative transportation impacts from new development, the City adopted a new citywide Transportation Development Impact Fee (TDIF). Most new growth areas, including North Natomas and Greenbriar, are not subject to the fee as they pay local impact fees instead, while infill areas pay both TDIF and the construction excise tax.
- The Major Street Construction Fund is the primary source of local grant match requirements for state and federal funds, where these funds can leverage four times

their amount in grant funding. As a result, the City Council adopted Resolution 2020-0398 on December 8, 2020, with a policy that overwidth reimbursement would not be included in finance plans in the future.

Greenbriar Finance Plan

When the Greenbriar Finance Plan was adopted in 2017, it included an assumption of \$3.25 million in overwidth reimbursement in one table in the document. Unlike the North Natomas Finance Plan, no overwidth program is defined or explained in the Finance Plan or Development Agreement.

In order to facilitate development, the Greenbriar developers requested to receive tax credits rather than wait for reimbursement and to include a provision for soft costs in addition to construction costs.

Staff agreed to recommend an agreement that includes tax credits. The recommended agreement is for the \$3.25 million stated in the Finance Plan plus an additional \$185,000 in soft costs.

CONTRACT ROUTING SHEET

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, it is NOT part of the contract.

General Information (Required)

Original Contract # (supplements only): _____ Supplement/Addendum #: _____
Assessor's Parcel Number(s): _____
Contract Effective Date: 04/13/2021 Contract Expiration Date (if applicable): _____
\$ Amount (Not to Exceed): \$ 3,435,086.00 Adjusted \$ Amount (+/-): \$ 0.00
Other Party: THE GREENBRIAR PROJECT OWNER, LLC
Project Title: GREENBRIAR OVERWIDTH REIMBURSEMENT AGREEMENT
Project #: P15598100 Bid/RFQ/RFP #: N/A
City Council Approval: YES if YES, Council File ID#: 2020-01512

Contract Processing Contacts

Department: Public Works Project Manager: LUCINDA WILLCOX
Contract Coordinator: RAQUEL GONZALEZ Email: RAGonzalez@cityofsacramento.org

Department Review and Routing

Contracts: _____ *Raquel Gonzalez* 03/23/2021
Project Manager: _____ *Lucinda Willcox*
Lucinda Willcox (Mar 23, 2021 09:00 PDT)
Supervisor: _____
Division Manager: _____
Dept Review: _____ *[Signature]*



Construction Related



ACM Signature Needed

Special Instruction/Comments (i.e. recording requested, other agency signatures required, etc.)

-----**FOR CLERK & IT DEPARTMENTS ONLY – DO NOT WRITE BELOW THIS LINE**-----

City of Sacramento Department of Public Works

AGREEMENT FOR REIMBURSEMENT FOR OVERWIDTH CONSTRUCTION (Major Street Construction Fund | Excise-Tax Credits)

This agreement, dated April , 2021, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation and charter city (the “**City**”); and THE GREENBRIAR PROJECT OWNER, LLC, a Delaware limited liability company (the “**Developer**”).

Background

- A. The Developer is the owner of the Greenbriar Project (P11-093), consisting of approximately 577 acres at the intersection of Elkhorn Boulevard and Highway 99.
- B. On May 30, 2017, the Sacramento City Council adopted Resolution No. 2017-0208 amending the Greenbriar Public Facilities Financing Plan (the “**Financing Plan**”).
- C. Among other things, the Financing Plan provides a strategy for funding the backbone infrastructure (as more fully described in the Financing Plan) needed to serve the land within the Greenbriar Project, including backbone roadways.
- D. The Financing Plan includes the potential reimbursement from the City Overwidth Program* for the costs of constructing specified backbone roadways—namely, the Overwidth Improvements identified in paragraph E below. Reimbursement for construction costs is capped at \$3,250,086, which is the Financing Plan’s original estimate of construction costs. The Financing Plan does not provide for the potential reimbursement of construction costs greater than the original estimate.
- E. “Overwidth Improvements” means the following public facilities, which the Developer must construct to satisfy conditions the City imposed when approving land-use entitlements for the Greenbriar Project: all improvements within the center section of Elkhorn Blvd, Street 1 (Waterside Drive) and Meister Way, excluding the 25-foot-wide roadway section on each of these roadways, as measured from the face of curb toward the street centerline. Overwidth Improvements generally consist of pavement removal, grading, paving, median curbs, striping, median irrigated landscaping, and median streetlighting. Overwidth Improvements are further divided into the “Phase 1 Overwidth Improvements” and the “Phase 2 Overwidth Improvements,” as set forth in Exhibit A to this agreement.
- F. Sacramento City Code section 3.36.010.E provides that monies in the major street construction fund are to be expended for “the acquisition of land and interest in land for, and the construction, reconstruction, replacement, widening, modification, and alteration . . . of existing and proposed streets in the city, including, but not limited to, separation structures, bridges, culverts for such streets, and traffic control and lighting. . . .”

* The City Overwidth Program consists of money allocated from the major street construction fund identified in Sacramento City Code section 3.36.010.E.

- G. Under Sacramento City Code section 3.36.010.F, if adequate money is not available in the major street construction fund to pay the cost of a proposed improvement that would usually be paid from the fund, then the city may, in its discretion, enter into an agreement with the Developer under which (a) the Developer will construct the improvement using the its own financing and (b) the City will reimburse the Developer for the construction cost when adequate money is available in the major street construction fund or will give the Developer credits against the excise tax established by section 3.36.010.A.
- H. This agreement is intended to implement the Financing Plan and City Code chapter 3.36 by providing for the reimbursement of the Overwidth Improvements.

With these background facts in mind, the parties hereby agree as follows:

1. **Credit Against Excise Tax.** To reimburse the Developer for the cost of constructing the Overwidth Improvements, the City shall, in accordance with City Code chapter 3.36, give the Developer excise-tax credits in a dollar amount equal to \$3,250,086 for the Developer's actual costs to construct the Overwidth Improvements, as confirmed by Department of Public Works. The City shall also reimburse the Developer in an amount not to exceed \$185,000 for "soft costs" such as the costs of engineering and design. The Parties agree that for purposes of this Agreement, the soft costs shall be calculated by applying fifteen percent (15%) to the approved construction costs, up to the not-to-exceed amount of \$185,000. Total reimbursement shall not exceed \$3,435,086.
 - 1.1 The Developer may use these credits to pay (offset) 60% of the excise tax owed on each building permit the Developer is issued for the Greenbriar Project; the Developer must pay the remaining 40% of the tax in cash.
 - 1.2 The credits used to pay the excise tax the Developer owes on building permits are capped at \$1,870,916 until the Developer has completed the Phase 1 Overwidth Improvements and the City has accepted them.
2. **Assignment of Credits.**
 - 2.1 The Developer may assign any credits created by this agreement to Lennar Homes of California, Inc. or to any affiliate of that corporation or any person or entity that acquires any part of the Greenbriar Project.
 - 2.2 Except as provided in section 2.1, the Developer shall not assign, hypothecate, create a security interest in, or otherwise transfer, pledge, or encumber (in whole or in part) any reimbursement or excise-tax credits created by this agreement without the City's prior written consent, which the City shall not withhold, condition, or delay be unreasonably. As used in this section 2.2, "the Developer" also means any person acting on the Developer's behalf any person acting on behalf of any creditor of the Developer.
 - 2.3 An assignee of credits may use them to pay (offset) the excise tax owed on building permits subject to the same conditions that apply to the Developer under section 1.

3. **City Administrator.** The Community Development Department will administer this agreement for the City except as otherwise provided in section 1.
4. **Notice.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 4 to the persons identified below, except as otherwise provided in section 11 below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 4.

If to the City:

City of Sacramento
 915 I Street, Fifth Floor
 Sacramento, California 95814-2604
 Attention: City Manager

If to the Developer:

The Greenbriar Project Owner, LLC
 888 San Clemente, Suite 100
 Newport Beach, CA 92660
 Attention: John Stanek & Caren Read

5. **Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.
6. **Severability.** If a court with jurisdiction rules that any provision of this agreement is invalid, unenforceable, or contrary to law or public policy, then the parties want the court to interpret this agreement as follows:
 - 6.1 by modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision;
 - 6.2 by holding that the rest of the agreement will remain in effect as written;
 - 6.2 by holding that the provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
 - 6.4 by holding the entire agreement unenforceable if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this agreement.
7. **Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
8. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibit A is part of this agreement.

9. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
10. **Signatures and Counterparts.** The Parties may sign this agreement with electronic or digital signatures. In addition, the parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of a signed counterpart may be accomplished by email transmission of a PDF file as follows:
- For delivery to the City, Lucinda Willcox, lwillcox@cityofsacramento.org
- For delivery to Developer, John Stanek, jstanek@integralcommunities.com
11. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

By: _____
Hector Barron, Assistant City Manager,
for Howard Chan, City Manager
Date: _____, 2021

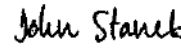
Attest
Sacramento City Clerk

By: _____
Signature

Approved as to Form
Sacramento City Attorney

By: 
Gerald Charles Hicks (Mar 23, 2021 12:18 PDT)
Gerald C. Hicks, Supervising Deputy City
Attorney

The Greenbriar Project Owner, LLC

By: 
Signature
John Stanek
Print Name
Authorized Representative
Title
Date: March 18, 2021

Approved as to Form
Thomas Law Group

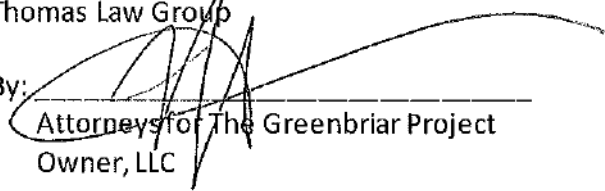
By: 
Attorneys for The Greenbriar Project
Owner, LLC

EXHIBIT A

PHASES OF OVERWIDTH IMPROVEMENTS

Phase I Overwidth Improvements:

- Elkhorn Boulevard
- Street 1 (Waterside Drive)

Phase 2 Overwidth Improvements:

- Meister Way

Table 4
Greenbriar Public Facilities Financing Plan
Estimated Gross Backbone Infrastructure Costs

Gross Backbone Improvements	Phase 1	Phase 2	Total Cost
Backbone Roadways			
On-Site Roadway	\$8,079,142	\$810,000	\$8,889,142
Off-Site Roadway	\$7,624,715	\$8,404,437	\$16,029,152
Subtotal Roadways	\$15,703,857	\$9,214,437	\$24,918,293
Backbone Sewer			
On-Site Sewer	\$3,199,352	\$0	\$3,199,352
Off-Site Sewer	\$0	\$0	\$0
Total Sewer	\$3,199,352	\$0	\$3,199,352
Backbone Water			
On-Site Water	\$3,791,475	\$0	\$3,791,475
Off-Site Water	\$3,050,865	\$1,909,575	\$4,960,440
Total Water	\$6,842,340	\$1,909,575	\$8,751,915
Backbone Drainage			
On-Site Drainage	\$7,728,842	\$7,428,246	\$15,157,088
Off-Site Drainage	\$456,570	\$0	\$456,570
Total Drainage	\$8,185,412	\$7,428,246	\$15,613,658
Backbone Landscape, Walls, Trails			
On-Site Landscape, Walls, Trails	\$4,190,913	\$4,767,255	\$8,958,168
Off-Site Landscape, Walls, Trails	\$0	\$0	\$0
Total Landscape, Walls, Trails	\$4,190,913	\$4,767,255	\$8,958,168
Less: Reimbursements			
City NN-PFFP	\$0	(\$400,000)	(\$400,000)
City Overwidth Program	(\$1,870,916)	(\$1,379,170)	(\$3,250,086)
Total Reimbursements	(\$1,870,916)	(\$1,779,170)	(\$3,650,086)
	Phase 1	Phase 2	Total Cost
Total Backbone Improvements	\$36,250,957	\$21,540,343	\$57,791,300

Source: Appendix B