

CITY OF YUBA CITY  
STAFF REPORT

**Date:** September 1, 2009  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works  
**Presentation by:** George Musallam, Public Works Director

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**Summary**

**Subject:** Deferred Improvement Agreement – American National Red Cross, Three Rivers Chapter [APN 51-280-060, 2125 East Onstott Frontage Road]

**Recommendation:** Adopt a resolution approving the execution of a Deferred Improvement Agreement with the American National Red Cross, Three Rivers Chapter, providing for the undergrounding of overhead utilities on East Onstott Frontage Road.

**Fiscal Impact:** None.

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**Background:**

On April 22, 2009, the Planning Commission approved Subdivision Map 08-02 to allow the American National Red Cross (Red Cross) to subdivide its 3.9-acre parcel located at 2125 East Onstott Frontage Road into two parcels. The approval contained eight conditions, one of which (Condition #6) requires that the Red Cross enter into a deferred improvement agreement for the future undergrounding of overhead utilities on East Onstott Frontage Road across the frontage of the Red Cross' property currently identified as AP# 51-280-060.

**Analysis:**

The enclosed deferred improvement agreement provides for the deferment of the undergrounding of the overhead utilities across the frontage of the subject property. At such time as an Underground Utility District is formed for East Onstott Frontage Road in the vicinity of the subject property, or the overhead utilities to the north or south of the subject property are placed underground, the property owner(s) at that time will be required to pay for undergrounding the portion fronting their property. The deferred improvement agreement will not expire and will be recorded at the Sutter County Recorder's in order to run with the land.

**Fiscal Impact:**

There is no fiscal impact to the City.

**Alternatives:**

Do not approve the execution of a Deferred Improvement Agreement, determine that it is practical to underground the overhead utilities at this time, and direct the property owner accordingly.

**Recommendation:**

Adopt a resolution approving the execution of a Deferred Improvement Agreement with the American National Red Cross, Three Rivers Chapter, providing for the undergrounding of overhead utilities on East Onstott Frontage Road.

Prepared by:

Diana Langley  
Diana Langley  
Principal Engineer

Submitted by:

SRJ  
Steven R. Jepsen  
City Manager

Reviewed by:

Department Head

Finance

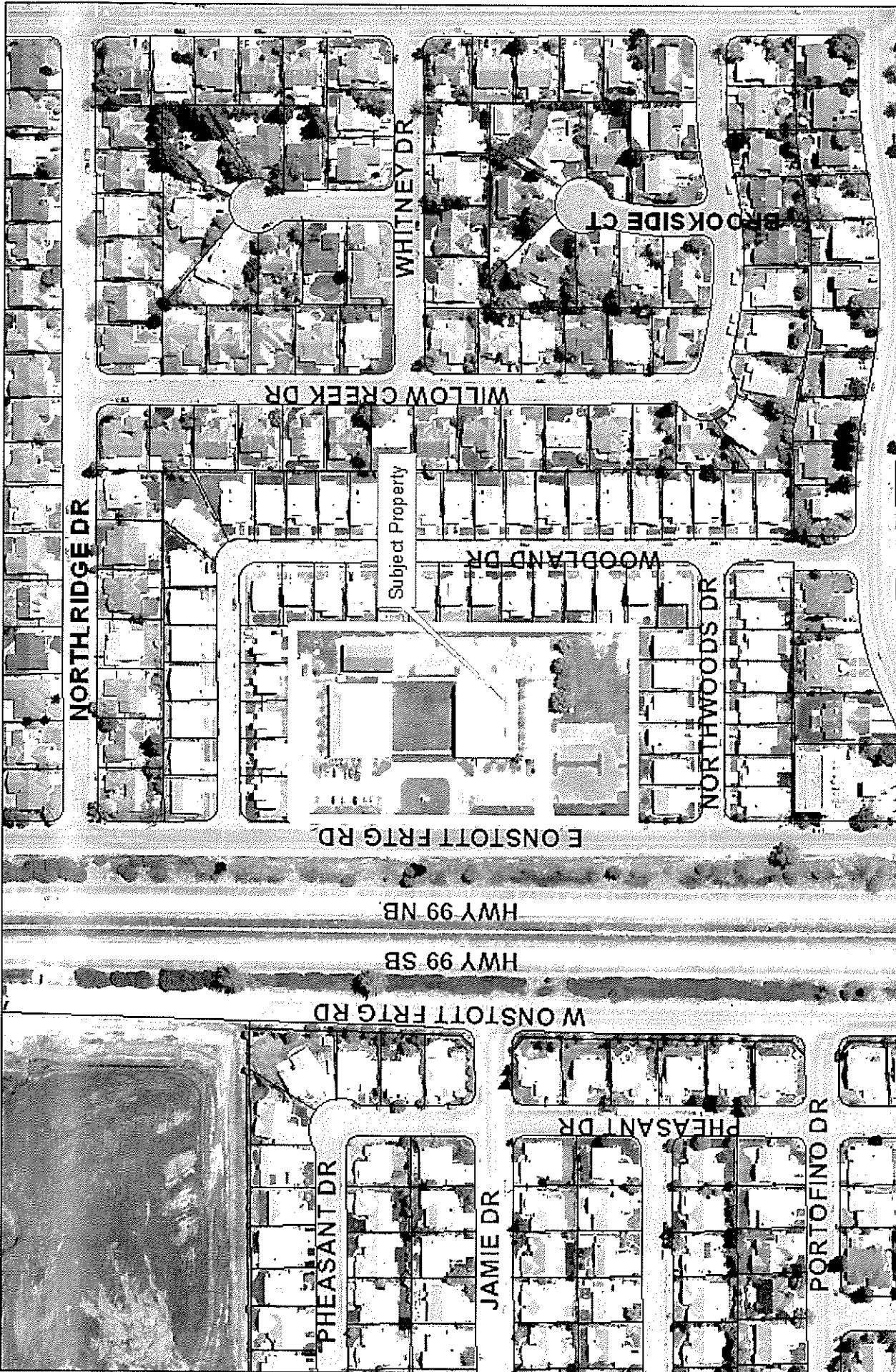
City Attorney

Other

GM  
MB  
\_\_\_\_\_  
\_\_\_\_\_



Subdivision Map SM 08-02



# Red Cross 2125 E. Onstott Frontage Rd.

100 50 0 100 Feet



RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY AUTHORIZING EXECUTION OF THE DEFERRED IMPROVEMENT AGREEMENT WITH THE AMERICAN NATIONAL RED CROSS, THREE RIVERS CHAPTER, FOR THE UNDERGROUNDING OF OVERHEAD UTILITIES ON EAST ONSTOTT FRONTAGE ROAD.

BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF YUBA CITY AS FOLLOWS:

That the Mayor and City Clerk be, and they are hereby authorized and directed to execute on behalf of the City of Yuba City that certain Deferred Improvement Agreement between the City of Yuba City and the American National Red Cross, Three Rivers Chapter, for the undergrounding of overhead utilities on East Onstott Frontage Road.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 1<sup>st</sup> day of September, 2009.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

AMERICAN NATIONAL RED CROSS, THREE RIVERS CHAPTER  
DEFERRED IMPROVEMENT AGREEMENT

This written contract and agreement is made and entered into this 18<sup>th</sup> day of August, 2009, by and between American National Red Cross, Three Rivers Chapter, hereinafter referred to as "Owner and Subdivider," and the CITY OF YUBA CITY, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, Subdivider has submitted to city for approval, a tentative map, being Tentative Map 08-02 and being that certain parcel of land designated as APN 51-280-060, all located within the corporate limits of the City of Yuba City, County of Sutter, State of California; and

WHEREAS, the property the subject of said tentative map lies generally to the east of East Onstott Frontage Road between North Woods Drive and Woodland Drive; and

WHEREAS, one of the conditions imposed by the Yuba City Municipal Code Title 8, Chapter 2 on Tentative Map 08-02 as a condition of approval requires the undergrounding of the overhead utilities located on the east side of East Onstott Frontage Road as it fronts the property, the subject of Tentative Map 08-02, the precise nature and extent of said public improvements being set forth as conditions of Tentative Map approval in the Yuba City Municipal Code, Title 8, Chapter 2; and

WHEREAS, Subdivider is permitted under the provisions of the Yuba City Municipal Code to cause a Final Map to be prepared in conformance with the approved tentative map within twenty-four (24) months after the approval of said tentative map, including conformance with any conditions attached to such approval to be filed, the data to accompany said Final Map, and the form thereof, being specified in Title 8, Chapter 2, Article 7 thereof; and

WHEREAS, Subdivider has submitted and caused to be prepared a Final Map of the lands the subject of Tentative Map 08-02 formerly approved by City, and has requested of City that the improvements of undergrounding the overhead utilities as required by the Municipal Code, as a condition of the tentative map, be deferred at this time and that he be permitted and authorized to record said Final Map notwithstanding that the public improvements of undergrounding the overhead utilities have not been made; and

WHEREAS, the City Engineer has reviewed the request for the deferment of said public improvements to underground the overhead utilities and feels that said request is justified in that it is not practical to construct said improvements at this time, within the meaning of Government Code Section 66499(a)(4) and has so recommended to the City Council; and

WHEREAS, the City finds that it would not be in the public interest to require the installation of the required public improvements to underground the overhead utilities at this time; and

WHEREAS, Section 8-2.705(a) of the Yuba City Municipal Code, in conjunction with Government Code Section 66499(a)(4), provides for the deferment of public improvements under specified conditions, provided that the Subdivider enters into an agreement approved by the City which guarantees that the required improvements being deferred are, in fact, constructed within specified time limits of the time that said improvements are determined by City to be necessary; and  
NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED, the parties hereto agree as follows:

1. The recitals at the outset of this Agreement the parties understand and agree are more than mere recitals, but are contractual commitments and covenants to which the parties agree to be bound and constitute a material consideration for the contractual provisions of this Agreement.

2. City hereby approves the Final Map for the lands embraced within Tentative Map 08-02, a copy of said Final Map being attached hereto and marked Exhibit A, and by this reference incorporated herein and made a part hereof, City finding and determining that said Final Map complies with the provisions of Section 8-2.701 of the Yuba City Municipal Code, and authorized the recordation thereof notwithstanding the fact that the public improvements to underground the overhead utilities required by the Yuba City Municipal Code, and authorized the recordation thereof notwithstanding the fact that the public improvements to underground the overhead utilities required by the Municipal Code as a condition of the approved tentative map for said parcel have not been constructed at this time. Said Final Map as recorded shall contain a legend thereon which shall constitute notice to all successors in interest that the property the subject of said Final Map is subject to the terms and

conditions of this Deferred Improvement Agreement shall be recorded concurrently with said Final Map and cross-indexed each to the other.

3. In consideration for City's approval of said Final Map and allowing the recordation thereof prior to the construction and completion and acceptance of the public improvements required as a condition of the tentative map, Subdivider agrees with City as follows:

(a) To commence construction, pursuant to improvement plans to be submitted by Subdivider to City in accordance therewith and to the satisfaction of City Engineer, those public improvements to underground the overhead utilities exacted as a condition of the approved Tentative Map 08-02, at the Subdivider's sole cost and expense, and at no cost to City whatsoever within ninety (90) days of the City's formation of an Underground Utility District for East Onstott Frontage Road or the undergrounding of the overhead utilities to the north or south of the subject property.

(b) The "Improvement" described immediately above in subparagraph (a), i.e, the formation of an Underground Utility District for East Onstott Frontage Road or the undergrounding of the overhead utilities to the north or south of the subject property, shall trigger Subdivider's contractual commitment herein to immediately construct, complete and submit to the City for acceptance the public improvements as previously described. The parties understand that the formation of an Underground Utility District for East Onstott Frontage Road or the undergrounding of the overhead utilities to the north or south of the subject property shall trigger the requirement for the construction of those public improvements to underground the overhead utilities exacted as a condition of approved Tentative Map 08-02.

The construction hereinbefore referred to shall be commenced within ninety (90) days of notice by City to Subdivider that the happening of either one of said events has occurred, and demanding of the Subdivider that it immediately commence and complete the construction of the relevant improvements. For this purpose, notice shall be directed to Subdivider at the address reflected on Tentative Map 08-02, to wit, 2125 East Onstott Frontage Road, Yuba City, CA 95991. Said contractual commitment of Subdivider to make the improvements described herein shall survive

any transfer of title of the property the subject of said Tentative Map 08-02, and shall bind and obligate Subdivider, its heirs, transferees, and or assigns, notwithstanding his transfer and/or sale of either of said parcels.

4. The parties agree that the estimated cost of the public improvements being deferred to underground the overhead utilities is not to exceed \$192,000.

5. Parties agree that the work of improvement to underground the overhead utilities shall be constructed and completed in accordance with approved improvement plans which shall be submitted to City; that said public improvements shall be constructed in accordance with the approved improvement plans, and only at such time as the City has accepted the same as having been so completed shall the time limit commence to run for the guarantee and warranty of said improvements.

6. This Agreement and all of its terms shall bind and obligate Subdivider, its heirs, grantees, transferees, assessors and successors in interest or title.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF YUBA CITY, A MUNICIPAL CORPORATION

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk

AMERICAN NATIONAL RED CROSS, THREE RIVERS  
CHAPTER, SUBDIVIDER

By Martha Juise

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Sutter }

On 8/10/09 before me, Sandra Barcenas Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Martha Mary Griese  
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.



Place Notary Seal Above

Signature Sandra Barcenas  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Deferred Improvement Agreement

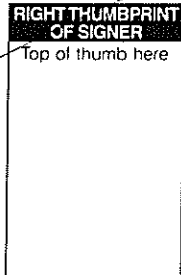
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

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

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_