

**MEMORANDUM OF UNDERSTANDING
TUMF CREDIT FOR MONETARY CONTRIBUTIONS FROM DEVELOPER
FOR THE TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

**BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND THE CITY OF BEAUMONT, CALIFORNIA**

This **MEMORANDUM OF UNDERSTANDING** (“Agreement”) is entered into this ___ day of _____, 2020, by and between the Western Riverside Council of Governments, a Joint Powers Agency comprised of the County of Riverside and eighteen (18) cities in Western Riverside County (“WRCOG”) and the City of Beaumont, a municipal corporation (“AGENCY”). WRCOG and AGENCY are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Pardee Homes, a California Corporation (“Developer”) owns real property located within the AGENCY (“Property”) and has requested from AGENCY certain entitlements and/or permits for the construction of improvements on the Property (“Project”);

WHEREAS, AGENCY is a member agency of WRCOG, the administrator for the Transportation Uniform Mitigation Fee (“TUMF”) Program;

WHEREAS, pursuant to the TUMF Program, AGENCY has adopted Ordinance No. 1091 (the “TUMF Ordinance”) which requires the payment of TUMF as a condition to the development of property to offset the fair share costs to deliver transportation improvements that mitigate the traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the “TUMF Network”) generated by new development;

WHEREAS, the “Transportation Uniform Mitigation Fee Nexus Study: 2016 Update” (“TUMF Nexus Study”) and the 5 year Transportation Improvement Program (“TIP”), as may be amended, designate the various TUMF Network improvement projects;

WHEREAS, as a condition to AGENCY’s approval of the Project, AGENCY has required Developer to pay for the construction of certain street and roadway improvements related to the Pennsylvania Widening Project. The street improvements will consist of widening Pennsylvania Avenue from 1st Street to 6th Street from two to four lanes, as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of AGENCY, and which are incorporated herein by this reference (“TUMF Improvements”). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Said improvements will be constructed by AGENCY;

WHEREAS, the TUMF Improvements have been designated in the TUMF Nexus Study as having Regional or Zonal Significance as further describe in the 2016 Nexus Study with a maximum cost of \$3,018,000 available for credit against the TUMF owed by the Developer for

the Project. The TUMF Improvements along Pennsylvania Avenue are designated in the TUMF Nexus Study with a maximum cost of \$3,018,000 available for credit against the TUMF owed by the Developer for the Project. The total amount designated in the TUMF Nexus Study for the TUMF Improvements is \$3,018,000 available for credit against the TUMF owed by the Developer for the Project. (“TUMF Credit”);

WHEREAS, AGENCY has entered into a binding agreement with the Developer (the “Binding Agreement”) which obligates the Developer to provide the funding for the total cost of the TUMF Improvements (the “Monetary Contribution”);

WHEREAS, AGENCY has submitted the Binding Agreement to WRCOG for approval in accordance with the TUMF Administrative Plan;

WHEREAS, AGENCY and WRCOG now desire to enter into this MOU in accordance with Section 4.3 of the WRCOG TUMF Credit/Reimbursement Manual, dated January 07, 2019 (“Manual”);

WHEREAS, after award of the construction contract by the Agency and payment of the Monetary Contribution by Developer, TUMF Credits and Reimbursement may be granted to Developer only in accordance with an approved Credit/Reimbursement Agreement consistent with the Manual.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged WRCOG and AGENCY hereby agree as follows:

TERMS

1.0 Incorporation of Recitals.

1.1 The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Agreements.

2.1 The Parties agree and confirm that the TUMF Improvements are identified in the Nexus Study, and qualify for TUMF Credit in the amount set forth in the above Recitals.

2.2 AGENCY has submitted the Binding Agreement to WRCOG, and WRCOG has reviewed and approved the Binding Agreement. Any amendments to the Binding Agreement pertaining to the Monetary Contribution shall be submitted to and approved by WRCOG before being approved by Agency.

2.3 The Parties acknowledge and agree that Developer cannot construct the TUMF Improvements for the reasons set forth in the above Recitals.

- 2.4 The TUMF Administrative Plan, the Manual and TUMF Ordinance, as the same may from time to time be amended, are incorporated herein by reference. The Parties acknowledge and agree that TUMF credits and reimbursements, if any, shall be subject to the terms and conditions of the TUMF Administrative Plan, the Manual and TUMF Ordinance.
- 2.5 AGENCY shall provide written notification to WRCOG and, if applicable, to Riverside County Transportation Commission (RCTC), of its determination that the TUMF Credits have been exhausted, and shall provide any information and back-up documentation regarding such determination as requested by WRCOG or RCTC, as applicable.

3.0 Miscellaneous.

- 3.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.
- 3.2 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY:

Jeff Hart
Director of Public Works
550 E. 6th Street
Beaumont, CA 92223

To WRCOG:

Christopher Gray
Director of Transportation
3390 University Avenue, Suite 450
Riverside, CA 92501

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

- 3.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.
- 3.4 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this

Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

- 3.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all Parties.
- 3.6 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.
- 3.7 Assignment or Transfer. The Parties shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other Parties. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.
- 3.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.
- 3.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding.

- 3.12 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with diligence to complete all covenants and conditions.
- 3.13 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.
- 3.14 Entire Agreement. This Agreement contains the entire agreement between Parties and supersedes any prior oral or written statements or agreements between Parties regarding the limited subject matter stated within this Agreement.

[SIGNATURES OF PARTIES ON NEXT PAGE]

**SIGNATURE PAGE
TO
MEMORANDUM OF UNDERSTANDING
RELATED TO TUMF CREDIT FOR DEVELOPER MONETARY CONTRIBUTIONS
FOR THE TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement
as of the day and year first above written.**

City of Beaumont

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

Western Riverside Council of Governments

By: _____
: EXECUTIVE DIRECTOR

APPROVED AS TO FORM:

By: _____
GENERAL COUNSEL