

**COOPERATIVE AGREEMENT BETWEEN
CITY OF BEAUMONT AND PARDEE HOMES
FOR CHERRY AVENUE STREET IMPROVEMENTS PROJECT**

1. PARTIES AND DATE

- 1.1 This Cooperative Agreement ("AGREEMENT") is made and entered into this 25 day of Sept, 2017, by and between the City of Beaumont ("CITY"), a municipal corporation organized under the laws of the State of California, with its principal address located at 550 E. 6th Street, Beaumont, California 92324 and Pardee Homes ("PARDEE"), a California corporation. CITY and PARDEE are sometimes referred to individually as "party" and collectively as "parties" herein.

2. RECITALS

- 2.1 Cherry Avenue is an existing street within the City Beaumont between 8th Street on the south and Antonell Street on the north. Cherry Avenue lies adjacent to and west of Tract 31468-6, developed by PARDEE, and adjacent to the Cherry Avenue drainage channel. A portion of the west side of Cherry Avenue is partially improved while the east side of Cherry Avenue is unimproved.
- 2.2 CITY and PARDEE have jointly determined that in addition to street improvements on the east side of Cherry Avenue as required for PARDEE's development and in accordance with the initial Conditions of Approval for Tract 31468-6, certain improvements shall also be completed on the west side of Cherry Avenue at the expense of the CITY as further provided herein.
- 2.3 For purposes of this Agreement, "PROJECT" means improvements to the east and west sides of Cherry Avenue, including removal of asphalt paving, new asphalt paving, curb and gutters, sidewalks, driveway approaches, drainage structures, paved access road and other miscellaneous improvements, as shown in the Street Improvement Plans ("Street Improvement Plans") for the improvements which have been previously prepared and approved by the CITY in May 2014 (CITY File #1990).

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

3. TERMS

3.1 CITY OF BEAUMONT AGREES

- 3.1.1 The Recitals to this Agreement are hereby incorporated herein by this reference.

- 3.1.2 The cost of the CITY-requested PROJECT improvements described in Section 3.1.7 (the "City Share") shall not exceed Five Hundred Thousand Dollars (\$500,000.00) unless the increased cost is the result of change orders approved by the Public Works Director. The actual costs incurred by PARDEE for such improvements shall apply against the \$8,109,831 in expenditures PARDEE has agreed to make in 2017 for "DIF Improvements" pursuant to its Settlement Agreement with the City dated February 7, 2017 ("Settlement Agreement") and the acquisition agreements to be entered into by the CITY and PARDEE pursuant to the Settlement Agreement ("Acquisition Agreements").
- 3.1.3 PARDEE shall receive credit against the CITY development impact fees in an amount equal to the actual costs of the City-requested PROJECT improvements described in Section 3.1.7 in accordance with the Settlement Agreement and Acquisition Agreements, and the entire PROJECT may be acquired by the CITY with proceeds of community facilities district special taxes and bonds in accordance with the terms of the Settlement Agreement and Acquisition Agreements.
- 3.1.4 To provide technical assistance for the PROJECT.
- 3.1.5 To issue no-fee permits and provide inspection for the PROJECT.
- 3.1.6 To review, comment on, and reasonably approve the design plans, specifications and estimates prior to PARDEE soliciting competitive bids for the construction of the PROJECT.
- 3.1.7 Specific CITY reimbursement responsibility items are limited to the associated costs of improvements performed by PARDEE to the west side of the PROJECT and a 20 foot wide by 450 foot asphalt concrete extension of PROJECT north of Antonell Street not to exceed the City Share as follows:

Environmental, design and engineering services allocable to the items below:

PROJECT improvements along the west side between Stations 10+00 to 15+70 as per the approved Street Improvement Plans – graded overlay or remove and replace existing asphaltic concrete.

Modify drive approaches.

Replace curb and gutter as required.

Construct standard CITY sidewalk.

Relocate misc. mailboxes, etc.

Remove trees and shrubs within public right-of-way.

Construct a 20 foot wide 450 foot long four (4) inches over native soil asphaltic concrete access road from Station 46+69.80 north to 1337 Cherry Avenue.

3.1.8 To be responsible for the construction of curb returns and ramps at NW and SE corners of Cherry Avenue and 8th Street.

3.2 PARDEE HOMES AGREES

3.2.1 To provide or cause to provide environmental, design/engineering services to construct the PROJECT.

3.2.2 To procure a contractor to build the PROJECT in compliance with a competitive bid process acceptable to the Public Works Director.

3.2.3 To coordinate the PROJECT implementation with all affected parties.

3.2.4 In determining PROJECT costs, to keep accurate records and accounts relating to the PROJECT regarding contract costs, hours worked, equipment and supplies used, mileage and similar matters.

3.2.5 Provide public notice in advance of construction. Provide continuous notice to local homeowners as to scope and duration of construction.

3.2.6 It shall not be responsible for the curb returns and ramps at NW and SE corners of Cherry Avenue and 8th Street.

3.2.7 To accept responsibility for any and all costs and expenses for the PROJECT under this Agreement over and above the City Share.

3.2.8 The PROJECT shall be constructed and installed in a good and workman-like manner by or on behalf of PARDEE and in strict accordance with the Street Improvement Plans.

3.2.9 To expressly require in the contract(s) for construction of the PROJECT that the contractor(s) and subcontractor(s) comply with all of the applicable provisions of the Labor Code including, but not limited to, the wage and hour, prevailing wage, workers compensation, and various other labor requirements in Division 2, Part 7, Chapter 1, including Sections 1720 to 1740, 1770 to 1780, 1810 to 1815, 1860 and 1861, which provisions are specifically incorporated herein by reference as though set forth herein in their entirety.



3.2.10 Before the commencement of any work on the PROJECT, to obtain and require its contractor(s) or subcontractor(s) on the Project to obtain commercial general liability insurance (primary) of not less than \$2,000,000.00 per occurrence for all coverages and \$2,000,000.00 general aggregate. The CITY and its employees and agents shall be added as additional insureds. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the CITY or any employee or agent of the CITY. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices. Such insurance shall not prohibit PARDEE, and its employees or agents, from waiving the right of subrogation prior to a loss. PARDEE waives its right of subrogation against the CITY. Unless otherwise approved by the CITY, the required insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best rating of "A, XV." Self-insurance shall not be considered to comply with these insurance specifications. Before commencing any work, PARDEE or its contractor(s) or subcontractor(s) shall obtain Worker's Compensation Insurance in an amount required by law and, failing to do so, the CITY may procure such insurance at the cost of PARDEE. PARDEE agrees to require all contractors and subcontractors who are required to build the PROJECT to purchase and maintain, before commencing any work, commercial general liability insurance as provided in this paragraph. PARDEE, before commencing any work shall, at its own expense, maintain comprehensive commercial general and automobile liability insurance issued by a California-admitted surety company with an A.M. Best rating of no less than "A, XV" for \$2,000,000 per occurrence. Coverage shall be for the entire duration of the permitted activities. Such liability insurance policy shall name, by endorsement, the City as an additional insured.

3.3 IT IS MUTUALLY AGREED AS FOLLOWS

- 3.3.1 PARDEE and/or its contractor(s) shall coordinate with the CITY to ensure adequate traffic control during the construction of the PROJECT.
- 3.3.2 Prior to the commencement of construction of the PROJECT, PARDEE shall ensure that the CITY and its officers and employees are named as additional insured persons for the liability insurance coverage for the PROJECT.
- 3.3.3 Ownership and title to all materials, equipment, and appurtenances installed as part of this agreement will automatically be vested with the

jurisdiction for which the improvements reside and no further agreement will be necessary to transfer ownership.

- 3.3.4 PARDEE shall defend, indemnify and hold the CITY and its officials, officers, employees, consultants, subcontractors, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent arising out of or incident to any negligent acts, omissions or willful misconduct of the indemnifying party or its officials, officers, employees, consultants, subcontractors, volunteers and agents arising out of or in connection with the performance of this agreement, including without limitation, the payment of attorney's fees and other related costs and expenses.
- 3.3.5 This AGREEMENT may be executed in one or more counterparts. When a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.
- 3.3.6 This AGREEMENT contains the entire AGREEMENT of the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings or agreements. This AGREEMENT may only be modified by a writing signed by both parties.
- 3.3.7 The parties declare that each party has all requisite power and authority to conduct its business and to execute, deliver, and perform the AGREEMENT. Each party warrants that the individuals who have signed this AGREEMENT have the legal power, right, and authority to make this AGREEMENT and bind each respective party.
- 3.3.8 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.

3.4 NOTICES

- 3.4.1 All notices required shall be sent by regular mail, postage prepaid and addressed as follows:

CITY OF BEAUMONT
Public Works Department
550 East 6th Street
Beaumont, CA 92223
Attention: Public Works Director

PARDEE HOMES
1250 Corona Pointe Court, #600
Corona, CA 92879
Attention: Jeff Chambers




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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the date first written above.

CITY OF BEAUMONT:

PARDEE HOMES:

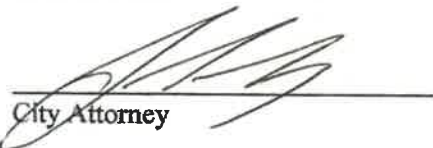
By: 
Lloya White, Mayor
City of Beaumont

By: 
Jeff Chambers
VP of Community Development

Attest:

By: 
Andreanna Pfeffer
City Clerk

Approved as to Form:

By: 
City Attorney