

C03-1 ?

Final 12/10/2002

**AGREEMENT BETWEEN THE
CITY OF BEAUMONT, THE CITY OF CALIMESA,
OAK VALLEY PARTNERS, L.P., AND PARDEE CONSTRUCTION COMPANY
REGARDING THE ANNEXATION OF THE
OAK VALLEY SCPGA GOLF COURSE SPECIFIC PLAN AREA**

THIS AGREEMENT is made and effective by and between the CITY OF BEAUMONT ("Beaumont"), the CITY OF CALIMESA ("Calimesa"), OAK VALLEY PARTNERS, L.P. ("Oak Valley") and PARDEE CONSTRUCTION COMPANY, a California corporation ("Pardee"). Beaumont, Calimesa, Oak Valley and Pardee shall sometimes be collectively referred to as the "Parties".

RECITALS

A. Calimesa objects to Beaumont's pending Annexation No. 02-ANX-02, which provides for various actions involving a 1747.9 acre area known as the "Oak Valley SCPGA Golf Course Specific Plan" (Riverside County Specific Plan No. 318) to Beaumont (the "Project"). The Project is generally located on the southwest side of Interstate 10, north of San Timoteo Canyon Road/Oak Valley Parkway, within Beaumont's sphere of influence. Except for approximately 150 acres owned by Pardee, and 500 acres owned by the Southern California Section of the P.G.A., the Project is owned by Oak Valley.

B. The purpose of this Agreement is to resolve Calimesa's objections to Beaumont's pending annexation of the Project, and to avoid lengthy and costly litigation.

C. It is the desire of Oak Valley and Pardee that this Agreement be made so that their respective development plans can be implemented.

NOW, THEREFORE, in consideration of the mutual terms, promises, covenants and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. Beaumont Agrees as Follows:

a. **Street Access and Alignment.** Beaumont shall provide, as part of the Project implementation, for access to properties within Calimesa that adjoin Desert Lawn Drive and Champions Drive, to Riverside County Standards. Notwithstanding the provisions of Paragraph 1.b. below, Calimesa agrees that Beaumont shall retain temporary jurisdiction to facilitate the review, approval, permitting and inspection of both sides of Champions Drive for the purpose of causing the intersection of Champions Drive and Desert Lawn Drive to be constructed as a "T" intersection.

b. **Remnant Parcel.** Beaumont shall remove from Annexation 02-ANX-02 the irregularly-shaped parcel of land, consisting of about 7.5 acres, situated west of Desert Lawn Drive and north of realigned Champions Drive, as shown on attached Exhibit "A", and shall further require, as a condition of development of the Project, the dedication to Calimesa of the Desert Lawn Drive and Champions Drive right-of-way indicated on Exhibit "A". Beaumont shall not object to Calimesa's annexation of that property to Calimesa.

c. **Extraterritorial Sewer Service.** Plantation on the Lakes Mobilehome Park (APN 406-050-018, the "Mobilehome Park") and the commercial area adjacent thereto (APN 406-050-002, 406-050-003, 406-050-004, 406-050-019, 406-050-020, APN 406-050-021 and APN 407-230-010, hereafter collectively referred to as the "Commercial Area") are not presently served with off-site wastewater treatment and disposal. Beaumont owns and operates a community wastewater collection, treatment and disposal system. Beaumont agrees to provide wastewater treatment and disposal service to the Mobilehome Park and the Commercial Area as follows:

i. As private development progresses and a trunk main is built to the Beaumont city boundary where it adjoins the Mobilehome Park, Beaumont shall cause to be provided a sewer pipeline stub-out to the southerly boundary of the Mobilehome Park.

ii. Once the sewer stub-out is available and provided LAFCO approves, the Mobilehome Park and the Commercial Area may connect and obtain sewer service from Beaumont at the Commercial Area's and the Mobilehome Park's sole cost and expense and in accordance with Beaumont's rules and regulations governing sewer service in effect at the time of such connection.

d. **Split of Sales Tax Revenue.** Beaumont shall share with Calimesa, on a 50/50 basis, gross sales tax revenue generated by all commercial development within the Project during the 15-year period commencing July 1, 2003 and ending June 30, 2018. Payment of Calimesa's share of sales tax revenue received by Beaumont shall be made within 60 days of receipt thereof from the State Board of Equalization. Beaumont shall provide Calimesa with a statement of account upon request of Calimesa.

e. **Split of Transient Occupancy Tax.** Beaumont shall share with Calimesa, on a 50/50 basis, gross transient occupancy tax ("TOT") revenue generated by all hotel and motel development within the Project, commencing with the issuance of the first certificate of occupancy for a hotel or motel business and for up to 15 years thereafter, but under no circumstances and in no event shall Beaumont share any TOT revenue with Calimesa after June 30, 2028. Payment of Calimesa's share of TOT revenue received by Beaumont shall be made within 60 days of the conclusion of any period of reporting and payment of such taxes by the affected businesses. Beaumont shall provide Calimesa with a statement of account upon request by Calimesa.

f. **Residential Building Permit Surcharge.** Concurrently with the issuance of each original residential building permit within the Project, Beaumont shall levy and collect a \$100.00 Residential Building Permit Surcharge from Oak Valley and Pardee and their respective successors and assigns. Beaumont shall remit to Calimesa all Surcharge monies collected in any quarterly period not later than 90 days following the end of each respective quarter.

g. **Additional Payments.** In addition to the Residential Building Permit Surcharge, a total of \$100,000.00 shall be delivered to Beaumont by Oak Valley and Pardee and forwarded to Calimesa in accordance with Paragraphs 3.b, and 4.c. below.

2. **Calimesa Agrees as Follows:**

a. Calimesa shall not challenge, object to, or otherwise contest Beaumont's approval and development of the Project or the proposed annexation of the Project to Beaumont.

b. Calimesa shall withdraw LAFCO Application No. 1998-08-3.

c. Calimesa shall not cooperate with, assist, support, abet, knowingly confer with or otherwise accommodate any person or entity proposing to challenge or otherwise contest Beaumont's approval and development of the Project or the proposed annexation of the Project to Beaumont.

3. **Oak Valley Agrees as Follows:**

a. **Obligation to Pay Residential Building Permit Surcharge.** Concurrently with the issuance of each original residential building permit for a residential lot within the Project (excepting that portion of the Project owned by Pardee), Oak Valley hereby agrees, for itself and for its successors and assigns, to pay to Beaumont the \$100.00 Residential Building Permit Surcharge.

b. **Obligation to Pay Additional Payments.** In addition to the Residential Building Permit Surcharge, Oak Valley agrees for itself, and for its successors and assigns, to pay additional payments totalling \$75,000.00. Payment of this sum shall be made and delivered in four installments to Beaumont as follows: \$18,750.00 upon the expiration of the statute of limitations for challenging LAFCO's approval of the annexation to the Project to Beaumont, or, if a challenge, claim or lawsuit is filed within the statute of limitations, upon final resolution of such challenge, claim or lawsuit (the "First Payment"); \$18,750.00 upon expiration of 90 days following the First Payment (the "Second Payment"); \$18,750.00 upon expiration of 90 days following the Second Payment (the "Third Payment"); \$18,750.00 upon expiration of 90 days following the Third Payment (the "Fourth Payment"). Upon receipt of each Payment, Beaumont shall, within ten (10) days of receipt, remit each Payment to Calimesa.

c. **Indemnification.** To fully indemnify, to the maximum extent permitted by law, Beaumont and Calimesa against, and hold each of them and their respective employees and agents completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, asserted or otherwise, whether in contract or tort, that may arise, directly or indirectly, from, or be occasioned by, or be in any way connected with Oak Valley's performance and/or failure to perform under this Agreement.

4. **Pardee Agrees as Follows:**

a. **Access and Dedication of Right-of-Way.** Pardee is the owner of the property depicted on Exhibit "A" hereto. In accordance with the provisions of Paragraphs 1.a. and 1.b. above, Pardee shall provide access and dedicate to Calimesa for public right-of-way and utility purposes that portion of the property indicated on Exhibit "A" which is necessary for the realignment and improvement of Champions Drive and Desert Lawn Drive.

b. **Residential Building Permit Surcharge.** Concurrently with the issuance of each original residential building permit for a residential lot within its portion of the Project, Pardee hereby agrees, for itself and for its successors and assigns, to pay to Beaumont the \$100.00 Residential Building Permit Surcharge.

c. **Obligation to Pay Additional Payments.** In addition to the Residential Building Permit Surcharge, Pardee agrees for itself, and for its successors and assigns, to pay additional payments totalling \$25,000.00. Payment of this sum shall be made and delivered in four installments to Beaumont as follows: \$6,250.00 upon the expiration of the statute of limitations for challenging LAFCO's approval of the annexation to the Project to Beaumont, or, if a challenge, claim or lawsuit is filed within the statute of limitations, upon final resolution of such challenge, claim or lawsuit (the "First Payment"); \$6,250.00 upon expiration of 90 days following the First Payment (the "Second Payment"); \$6,250.00 upon expiration of 90 days following the Second Payment (the "Third Payment"); \$6,250.00 upon expiration of 90 days following the Third Payment (the "Fourth Payment"). Upon receipt of each Payment, Beaumont shall, within ten (10) days of receipt, remit each Payment to Calimesa.

d. **Indemnification.** To fully indemnify, to the maximum extent permitted by law, Beaumont and Calimesa against, and hold each of them and their respective employees and agents completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, asserted or otherwise, whether in contract or tort, that may arise, directly or indirectly, from, or be occasioned by, or be in any way connected, with Pardee's performance and/or failure to perform under this Agreement.

5. **Enforcement of Obligations.**

a. **Automatic Nullity.** This Agreement shall become automatically null and void, without further notice or liability, in the event Calimesa or anyone successfully

challenges or otherwise successfully contests Beaumont's approval and development of the Project or the proposed annexation of the Project to Beaumont.

b. **Waiver.** Any waiver by one of the Parties of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent breach. No provision of this Agreement may be waived unless in writing and signed by the Parties.

c. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

d. **Dispute Resolution.**

i. The Parties will attempt in good faith to resolve promptly any dispute, controversy or claim arising out of or relating to this Agreement or any claimed breach thereof (collectively, "dispute") by direct negotiation between the respective City Managers and the senior executives of the non-municipal Parties who have authority to settle the dispute.

ii. The disputing Party shall give the other Party or Parties written notice of the dispute. Within ten (10) calendar days after notice is given, the Party receiving the notice shall respond to the notice in writing, or, if the dispute has not been resolved, the negotiating Parties shall meet at a mutually acceptable time and place, and thereafter as often as those negotiators reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute.

iii. If the dispute has not been resolved within thirty (30) days after the disputing Party gives notice, or if the Party receiving notice refuses to meet, either Party may initiate mediation of the dispute in accordance with the rules and procedures of the Judicial Arbitration and Mediation Service ("JAMS"), with each Party to bear its own attorneys' fees and costs of the mediation.

iv. If the dispute has not been resolved within sixty (60) days after a Party has given notice of intent to initiate mediation or either Party will not participate in the mediation, or if the mediator has concluded that the Parties are at impasse, whichever shall happen first, the dispute may be resolved by legal action.

v. If legal action is brought by any Party against the other arising from any dispute the prevailing Party shall be entitled to an award of reasonable attorneys' fees and costs.

6. **Rescission of Cooperative Agreement.** Beaumont and Calimesa hereby rescind that certain Cooperative Agreement between them dated July 23, 1997.

7. **No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies upon any person other than Calimesa and Beaumont.

8. **Further Documents.** Provided that it is reasonable and necessary to carry out the provisions of this Agreement, each Party to this Agreement, for itself and for its successors and assigns, agrees to execute or deliver any instrument (in recordable form, if required).

9. **Integration.** This Agreement contains the entire agreement and understanding between and among the Parties with respect to the subject matter hereof. There are no oral understandings, terms, conditions or promises, and none of the Parties have relied upon any representation, expressed or implied, not contained in this Agreement. This Agreement may only be modified or amended in writing and must be signed by each of the Parties.

10. **Costs and Fees.** The Parties shall bear their own costs and fees incurred to date in connection with the subject matter of this Agreement.

11. **Authorization to Sign.** The undersigned individuals, signing on behalf of Oak Valley and Pardee, hereby warrant and represent that they are duly and lawfully authorized to sign this Agreement and to bind Oak Valley, and its successors and assigns, and Pardee and its successors and assigns, to all of the terms, conditions and provisions of this Agreement. They further specifically acknowledge and agree that this Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

12. **Execution.** Four originals of this Agreement shall be executed by the Parties, so that each Party shall be entitled to retain an original signed Agreement. This Agreement shall not be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

APPROVED AND ACCEPTED:

CITY OF BEAUMONT

Dated: 12-13-02

By Brian DeForge
BRIAN DEFORGE, Mayor

ATTEST:

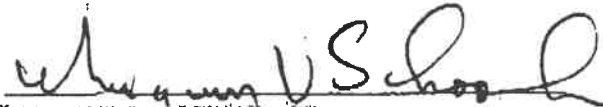
Buckley Wynn (Deputy)
City Clerk

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

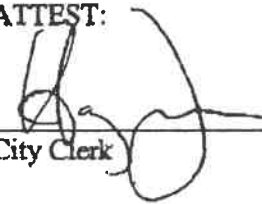
APPROVED AND ACCEPTED:

CITY OF CALIMESA

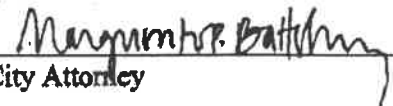
Dated: December 13, 2002

By 
GREGORY V. SCHOOK, Mayor

ATTEST:


City Clerk

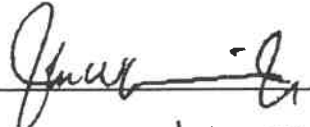
APPROVED AS TO FORM

By 
City Attorney

APPROVED AND ACCEPTED:

OAK VALLEY PARTNERS, L.P.


Dated: 12/11/02

By 
Print Name: John W. Ohanen Jr.
Title: Project Director

APPROVED AND ACCEPTED:

PARDEE CONSTRUCTION COMPANY

Dated: 12/18/02

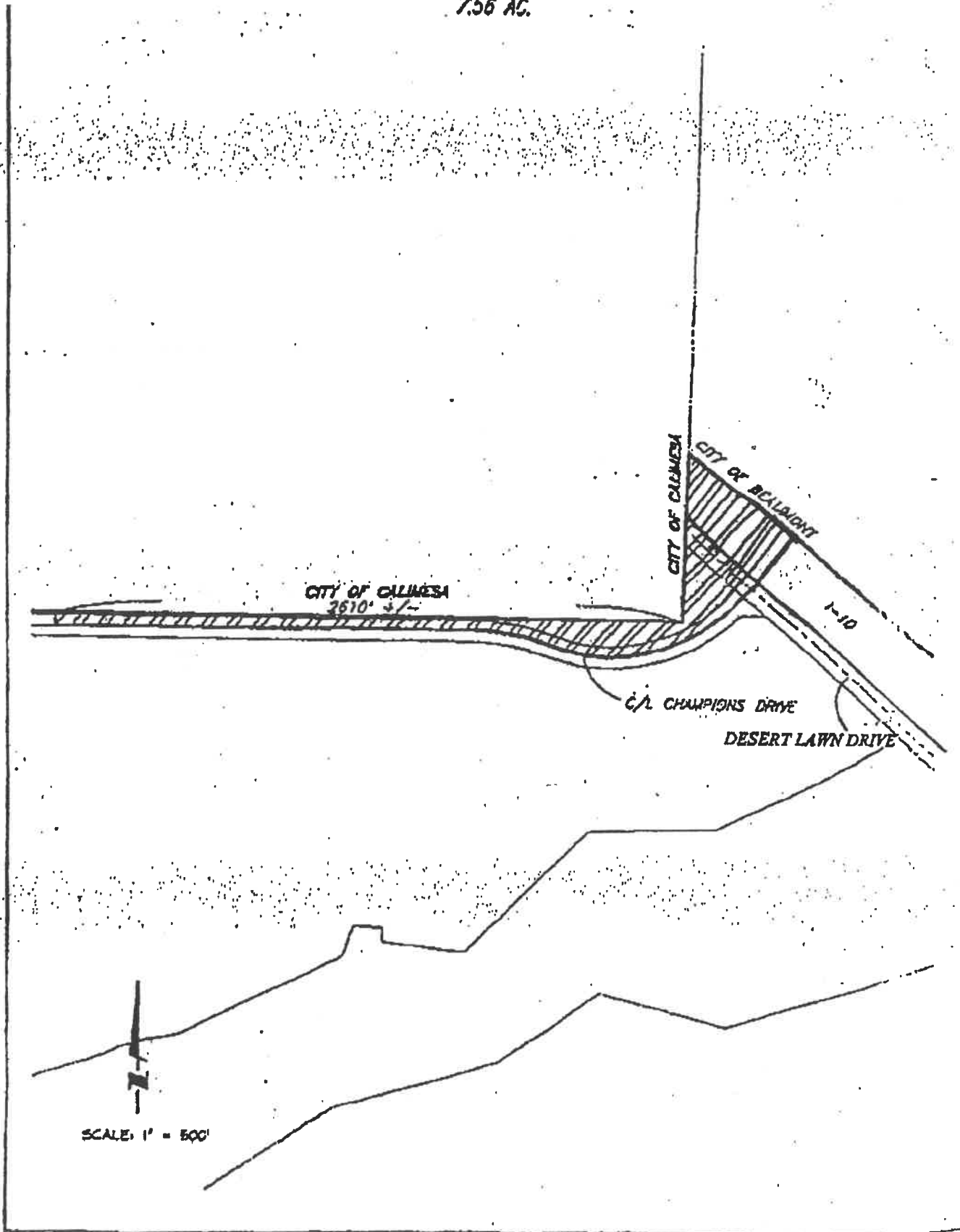
By 
~~President~~ Director Comm. Development
Print Name: Michael Taylor

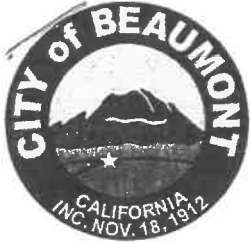
Dated: _____

By N/A
Secretary
Print Name: _____

EXHIBIT "A"

7.56 AC.





City of Beaumont

550 E. 6th Street
Beaumont, CA 92223
(951) 769-8520
FAX (951) 769-8526

Email: cityhall@ci.beaumont.ca.us
www.ci.beaumont.ca.us

July 30, 2006

Mr. Dennis R. Wagoner
Plantation on the Lake
10961 Desert Lawn Drive
Calimesa, California 92320

RE: Plantation on the Lakes - Sewer Service and Connection Costs

Dear Mr. Wagoner:

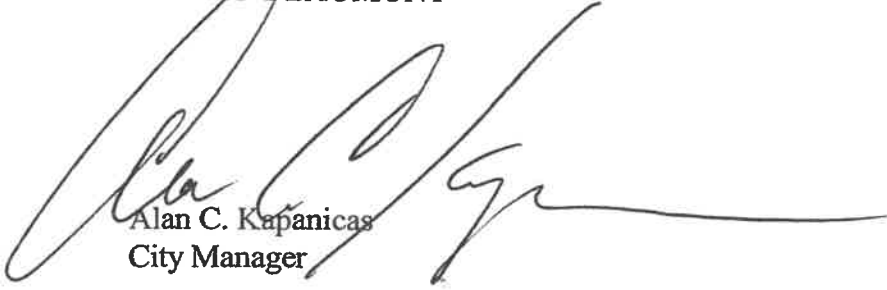
Thank you for your letter requesting sewer service for 507 existing and 70 future dwelling units in the Plantation on the Lake project in Calimesa. This letter will outline the costs to connect 507 existing and 70 future dwelling units to the City of Beaumont sewer system in accordance with that certain settlement agreement between the City of Beaumont and the City of Calimesa.

The total cost to connect the 507 existing units is currently \$2,138,962.41. This cost could be financed by the City of Beaumont as part of the sewer service charge and spread over the 577 lots so the sewer service charges would be level throughout the project. The future 77 units would pay a connection fee of \$4,218.86 at the time of connection to the sewer system. The combined service and financed connection charge would be \$44.92 per month, subject to future adjustments in the rates and charges. The financed portion of the charge is based on a thirty year amortization schedule and a 5% rate of interest. The City of Beaumont will not agree to maintain the on site sewer collection system as it is a private system built to the specifications of others.

In order to move forward, the City of Calimesa must obtain approval from the Riverside County Local Agency Formation Commission (LAFCO) to allow the City of Beaumont to provide sewer service outside the city limits. I believe this should be a simple process based on Calimesa purchasing capacity in the Beaumont sewer system. It would therefore be most desirable if Calimesa made a formal request to Beaumont and LAFCO, and also agreed to place any delinquencies on the tax roll for collection since Beaumont has no jurisdiction to do so directly. The City of Beaumont would agree to work closely with Calimesa in this regard.

Thank you again for your letter. Please let me know if I can provide any additional information with respect to this matter.

Very truly yours;
CITY OF BEAUMONT

A large, stylized handwritten signature in black ink, appearing to read 'Alan C. Kapanicas', is written over the typed name and title.

Alan C. Kapanicas
City Manager

cc: David Lane, City Manager, City of Calimesa



City of Calimesa
908 Park Avenue, Calimesa, California 92320

October 16, 2008

Mr. Alan Kapanicas
City Manager
City of Beaumont
550 East 6th Street
Beaumont, California 92223

SUBJECT: Request for City of Beaumont to Provide Sewer Capacity for 30-acre Commercial Site Located at Champions Drive & Desert Lawn Drive, Calimesa, California

Dear Mr. Kapanicas:

The City of Calimesa is requesting your cooperation in resolving a sewer issue facing a 30-acre commercially zoned property located on the northwest corner of Champions Drive and Desert Lawn Drive in the City of Calimesa. This property is owned by Novak/Sunlite/WDCII General Partnership. The property is within the boundaries of Beaumont/Cherry Valley Water District (BCVWD), and BCVWD provides water service to the property. However, no entity presently provides sewer service to the property. The City of Calimesa is asking that the City of Beaumont enter into an agreement consenting to provide sewer capacity to this site based on a recent determination from the Riverside County Local Agency Formation Commission (LAFCO).

Within the last five years, Sunlite Development, on behalf of the property owner, has been attempting to develop the subject site but has been unable to resolve the sewer issue. At the time the property was annexed into the BCVWD, it was understood that BCVWD would eventually activate its latent sewer powers to serve this property and other properties located within BCVWD's jurisdictional boundaries throughout Calimesa and Beaumont. However, in 2007, the voters turned down the ballot measure that would make this happen, and it is our understanding that, as a result, LAFCO is unable to authorize BCVWD to provide actual sewer service to the project. We have also determined that the City of Beaumont may not lawfully provide extra-territorial sewer service outside its jurisdictional boundaries.

Sunlite Development has approached the City of Calimesa and requested that the City of Calimesa and the City of Beaumont enter into an agreement for Beaumont to provide *sewer capacity* to the property, based on the settlement agreement that was entered into between the City of Calimesa, the City of Beaumont, Oak Valley Partners, and Pardee Construction Company on December 11, 2002 in connection with the annexation of the Oak Valley Golf Course Specific Plan Area. Specifically, Section 1(c) on Page 2 of the settlement agreement, reads as follows (see attached copy):



"1. **Beaumont Agrees as Follows:**

...

c. **Extraterritorial Sewer Service.** Plantation on the Lakes Mobilehome Park (APN 406-050-018, the "Mobilehome Park") and the commercial area adjacent thereto (APN 406-050-002, 406-050-003, 406-050-004, 406-050-19, 406-050-020, ANP 406-050-021 and APN 407-230-010, hereinafter collectively referred to as the "Commercial Area") are not presently served with offsite wastewater treatment and disposal. Beaumont owns and operates a community wastewater collection, treatment and disposal system. Beaumont agrees to provide wastewater treatment and disposal service to the Mobilehome Park and the Commercial Area as follows:

i. As private development progresses and a trunk main is built to the Beaumont City boundary where it adjoins the Mobilehome Park, Beaumont shall cause to be provided a sewer pipe line stub-out to the southerly boundary of the Mobilehome park.

ii. Once the sewer stub-out is available and provided LAFCO approves, the Mobilehome Park and the Commercial Area may connect and obtain sewer service from Beaumont at the Commercial Area's and Mobilehome Park's sole cost and expense and in accordance with Beaumont's rules and regulations governing sewer service in effect at the time of such connection.

(Underlined italicized emphasis added.) A complete copy of the settlement agreement is provided with this letter for your convenience. Part of the commercial area referred to in the settlement agreement is the 30-acre site identified in the first paragraph of this letter (i.e., APN 406-050-21).

We understand that the sewer pipe line stub-outs have been constructed in the City of Beaumont portion of Champions Drive, directly adjacent to the City of Calimesa portion of Champions Drive and directly across from the subject property. The two stub-outs are approximately fifty (50) feet from the property. Recently, LAFCO informed Sunlite and the City of Calimesa that LAFCO does not consider provision of sewer capacity by Beaumont to the property, or provision of billing service by BCVWD, to be an exercise of latent sewer powers or extraterritorial provision of sewer service by the City of Beaumont or BCVWD, but rather considers these services to be administrative functions. As such, LAFCO has advised the property owner and the City of Calimesa that no LAFCO action is required in order for the City of Calimesa to form a district to own the portion of the sewer pipe in Calimesa, for the City of Beaumont to provide sewer capacity to the property, and for BCVWD to provide billing service to collect fees owed to the City of Beaumont from the property owner for provision of sewer capacity. A copy of the email confirmation from LAFCO is attached to this letter for your information (see attached email from Adriana Romo - LAFCO, dated 9/12/08, and Sunlite letter to LAFCO, dated 9/3/08).

In order to effectuate provision of sewer capacity to the property so that a feasible development application may be processed by the property owner, an agreement will be needed between the City of Calimesa, the City of Beaumont, BCVWD and the property owner. Therefore, the City of Calimesa



requests that the City of Beaumont enter into such an agreement to provide sewer capacity to the subject 30-acre site. Together with this request, the City of Calimesa will also submit a request to BCVWD that BCVWD enter into this agreement to serve as the billing agent for sewer service for the subject property. According to the property owner, BCVWD has agreed to this arrangement as long as the Cities of Beaumont and Calimesa are also in agreement. BCVWD will provide both water service and sewer collection fee service. As such, we ask that the City of Beaumont provide a written response to the City of Calimesa, BCVWD, and the property owner indicating its willingness to work with the City of Calimesa and BCVWD to enter into a mutually acceptable agreement to accomplish these purposes.

In order to provide for financing for the construction and maintenance of the sewer line, Sunlite Development, on behalf of the property owner, has notified the City that the property owner will agree to the establishment of an assessment district to own, operate, and maintain those portions of the sewer system within the City right-of-way. The costs for establishing the assessment district as well as a development agreement to build, operate, and maintain the sewer system would be paid 100 percent by the developer and property owner. As part of the agreement, the developer and property owner must also agree to indemnify and hold the City of Calimesa harmless as to the operation, maintenance, repair, damage to or other requirements. It is our understanding that the formation of an assessment district to finance the construction, maintenance, and operations of the sewer line will be acceptable to LAFCO (see attached email from Adriana Romo - LAFCO, dated 9/12/08, and Sunlite letter to LAFCO, dated 9/3/08).

The City of Calimesa is willing to prepare a draft agreement for consideration by the City of Beaumont, BCVWD, and the property owner. We suggest that a meeting of the principles from the City of Beaumont, City of Calimesa, and BCVWD be arranged to discuss the relevant issues. I would be happy to take the lead on setting up such a meeting.

Please contact me as soon as possible to discuss these issues. Your anticipated courtesy and cooperation are appreciated.

Sincerely,

Randy Anstine
Interim City Manager

cc: Sunlite Development c/o Paul Dewey, P.O. Box 10668, Palm Desert, CA 92255
Chuck Butcher, BCVWD
Gus Romo, Community Development Director
Kevin G. Ennis, City Attorney
Amy Greyson, Assistant City Attorney

Enclosures: December 11, 2002 Settlement Agreement
LAFCO email dated 9/12/08
Sunlite letter to LAFCO dated 9/3/08