



CITY OF LODI

PUBLIC WORKS DEPARTMENT

COUNCIL COMMUNICATION

TO: City Council
FROM: City Manager
MEETING DATE: April 1, 1987
AGENDA TITLE: Approve Development Agreement for Lockeford Place Located at 225 W. Lockeford Street

RECOMMENDED ACTION: That the City Council approve the development agreement for Lockeford Place at 225 W. Lockeford Street and direct the City Manager and City Clerk to execute the development agreement on behalf of the City.

BACKGROUND INFORMATION: Bennett & Compton, Inc., the developer of this parcel, has furnished the City with the improvement plans, the necessary agreements, guarantees, insurance certificates, and fees for the proposed development.

This development is located at 225 W. Lockeford Street. It is zoned C-2 and will be the location of 4 fourplex residential buildings containing 16 units. See attached sketch.

Jack L. Ronsko
Public Works Director

JLR/SB/ma

Attachment

APPROVED:

THOMAS A. PETERSON, City Manager

FILE NO.

DEVELOPMENT AGREEMENT
for the
IMPROVEMENTS
of
225 West Lockeford Street
Lockeford Place

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City", and BENNETT & COMPTON, INC., hereinafter referred to as "Subdivider."

RECITALS:

Subdivider has presented to City for approval a final parcel map, hereinafter called "Map", and necessary street and easement dedications, shown thereon.

Subdivider has requested approval of the map prior to the construction and completion of improvements, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision, hereinafter called "subdivision", designated on the map, all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which plans and specifications are now on file in the office of and endorsed with the approval of the Public Works Director.

Council of the City will accept the dedications offered, on condition that Subdivider first enter into and execute this agreement with City; and

This agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 16 of the Lodi City Code.

NOW THEREFORE, for and in consideration of the acceptance of the dedications offered, and in order to insure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act (Government Code 66410 et seq.) and said City Code, the parties agree as follows:

1. Performance of Work by Subdivider

Subdivider will do and perform, or cause to be done and performed at Subdivider's own expense, in a good and workmanlike manner, and furnish all required materials, all under the direction and to the satisfaction of the Public Works Director, all of the work and improvements as shown on the approved improvement plans, Drawing No. 86D117 (Revision #1) for the subdivision, which are on file in the Public Works Department.

The Subdivider shall also perform or cause to be performed the following items which are not shown on the improvement plans:

- A. Street light installation;
- B. Gas line installation;
- C. Telephone line installation
- D. Electrical system
- E. Hook up street light system

Subdivider shall also perform all work and furnish all materials necessary to comply with any changes required by the Public Works Director, which, in his opinion, are necessary or required to complete the work in conformance with City standards.

2. Development Changes

Prior to the approval of the final subdivision map by the City, it is agreed that the Subdivider shall deposit with the City the amount of money shown as the "Developer Cost" on Billing Schedule attached hereto and by this reference made a part hereof.

3. Performance of Work by City

From payments made under Billing Schedule, the City will perform or install or cause the installation of the following items:

- A. Fire hydrant markers
- B. 6" Water tie in Pleasant Ave.
- C. Wastewater services

4. Work; Time for Commencement and Performance

Subdivider shall, within 365 calendar days from the date of this agreement, perform or cause to be performed all work and/or improvements described under this agreement. At least fifteen calendar days prior to the commencement of work hereunder, Subdivider shall notify the Public Works Director in writing of the date fixed by Subdivider for commencement thereof, so that City can provide inspection services.

5. Time Extension

Time is of the essence of this agreement. The City Council may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Subdivider's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

6. Survey Monuments

Prior to acceptance of the subdivision improvements, the Subdivider shall have installed and in place all survey monuments as shown on the Subdivision Map.

7. Permits; Compliance with Law

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

8. Superintendence by Subdivider

Subdivider shall give personal superintendence to the work on said improvement, or have a competent agent, foreman or superintendent, satisfactory to the Public Works Director, on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City to all parts of the work.

10. Contract Security

Concurrently with the execution hereof, Subdivider shall furnish Improvement Security of at least one hundred percent (100%) of the estimated contract price as security for the faithful performance of this agreement and repair or replacement of defective work under paragraph 15 following; and an amount equal to at least fifty percent (50%) of the estimated contract price as security for the payment of all persons performing labor and furnishing materials in connection with this agreement as more fully described in the State Subdivision Map Act.

The City has determined these security amounts to be as follows:

Faithful Performance	\$ 11,700.00
Labor and Materials	\$ 5,900.00

11. Hold-Harmless Agreement

Subdivider hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Subdivider's or Subdivider's contractors', subcontractors', agents' or employees' operations under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Subdivider or any of Subdivider's contractors or subcontractors. Subdivider agrees to, and shall, defend City and its elective and appointive boards, commissions,

officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

- a. That City does not, and shall not, waive any rights against Subdivider which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Subdivider, of any of the insurance policies described in paragraph 12 hereof.
- b. That the aforesaid hold-harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12. Subdivider's Insurance

Subdivider shall not commence work under this agreement until Subdivider shall have obtained all insurance required under this paragraph, nor shall Subdivider allow any contractor or subcontractor to commence work on Subdivider's contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a. Compensation Insurance

Subdivider shall maintain, during the life of this agreement, Worker's Compensation Insurance for all Subdivider's employees employed at the site of improvement, and in case any work is sublet, Subdivider shall require any contractor or subcontractor similarly to provide Worker's Compensation Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider. Subdivider hereby indemnifies City for any damage resulting to it from failure of either Subdivider or any contractor or subcontractor to take out or maintain such insurance.

b. Comprehensive General and Automobile Insurance

Subdivider shall take out and maintain during the life of this agreement such insurance as shall insure City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise on the subdivision property, including any public streets or easements, from Subdivider's or any contractor's or subcontractor's operations hereunder, whether such operations

be by Subdivider or any contractor or subcontractor or by anyone directly or indirectly employed by either Subdivider or any contractor or subcontractor, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

\$1,000,000 Bodily Injury - Ea. Occurrence/Aggregate
\$1,000,000 Property Damage - Ea. Occurrence/Aggregate

or

\$1,000,000 Combined Single Limit

2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury - Ea. Person
\$1,000,000 Bodily Injury - Ea. Occurrence
\$1,000,000 Property Damage - Ea. Occurrence

or

\$1,000,000 Combined Single Limit

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

(a) Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees as Additional Named Insureds insofar as work performed by the insured under written contract with the City of Lodi. This endorsement shall be on the form furnished by the City and shall be included with Subdivider's policies.

(b) Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

13. Evidence of Insurance

Subdivider shall furnish City concurrently with the execution hereof, with satisfactory evidence of the insurance required and evidence that each carrier is required to give City at least 30 days prior

notice of the cancellation or reduction in coverage of any policy during the effective period of this agreement.

14. Title to Improvements

Title to, and ownership of, all improvements constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City.

15. Repair or Reconstruction of Defective Work

If, within a period of one year after final acceptance by City of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this agreement, fails to fulfill any of the requirements of this agreement plans and specifications referred to herein, Subdivider and Subdivider's surety shall without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider or Subdivider's surety fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Subdivider can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Subdivider shall pay to City the actual cost of such repairs plus fifteen (15) percent for administration and overhead costs.

16. Mud, Debris and Dust

Subdivider agrees and covenants not to permit mud or other debris to be tracked from the construction site or elsewhere onto City or County streets or onto private property without express permission. Subdivider further agrees not to cause damage to City or County streets.

Should any mud or debris be deposited in City or County streets or any damage caused to City or County streets, the Subdivider shall have the same removed or repaired forthwith, and if not removed or repaired upon notice within a specified time, the City shall cause the same to be removed or repaired and the Subdivider shall be charged for the cost of said removal or repairs.

The Subdivider, Subdivider's contractor and/or agents shall be responsible so no dust problem is created during construction, including installation of telephone, electrical, Cable TV and gas facilities.

If a dust problem arises during development, including but not limited to installation of telephone, electrical, cable television, and/or gas facilities, and has not, after notice, been abated by Subdivider within a specified period of time, the City shall cause the same to be controlled, and the Subdivider shall be charged with the cost of said control.

17. Fire Protection During Construction

Fire protection facilities, including all-weather access road and an approved water supply capable of supplying the required fire flow, shall be installed and made serviceable in accordance with Sections 10.207 and 10.301 of the Uniform Fire Code, prior to and during the time of building construction. The above may be modified when alternate methods of protection approved by the Fire Chief are provided.

18. Protection of Existing Improvements

Damage to any existing improvements or private or public utility lines installed or being installed which damage occurs during the onsite and offsite construction required of Subdivider shall be the absolute responsibility and liability of Subdivider. In other words, it shall be the Subdivider's responsibility to pay for damage to existing improvements and public or private utilities within the development. Damage to any existing facilities outside the limits of the subdivision damaged as part of the construction of the required subdivision improvements is also the Subdivider's responsibility.

19. Dwelling Occupancy

The City will not allow occupancy of any building or structure within the subdivision until all subdivision improvements have been approved and accepted by the Public Works Department. If building is started prior to acceptance of the subdivision improvements, it is the Subdivider's responsibility to inform all prospective purchasers that occupancy will not be permitted until said improvements are so accepted.

20. Subdivider Not Agent of City

Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this agreement.

21. Notice of Breach and Default

If Subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider's insolvency, or if Subdivider or any of Subdivider's contractors, subcontractors, agents or employees, should violate any of the provisions of this agreement, the Public Works Director or City Council may serve written notice upon Subdivider and Subdivider's surety or breach of this agreement, or of any portion thereof, and the default of Subdivider.

22. Breach of Agreement; Performance by Surety or City

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvements herein specified; provided however, that if the surety, within five days, after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor.

23. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Jack L. Ronsko
Public Works Director
221 West Pine Street
Call Box 3006
Lodi, CA 95241-1910

Notices required to be given to Subdivider shall be addressed as follows:

Bennett & Compton, Inc.
1200 West Tokay Street
Lodi, CA 95240

Notices required to be given to Subdivider's Agent shall be addressed as follows:

Notices required to be given to surety shall be addressed as follows:

Provided that either party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

24. Execution

DATED this 1st Day of April; 1987.

In Witness Whereof, BENNETT & COMPTON, INC.

have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

SUBDIVIDERS, DEVELOPERS
AND/OR OWNERS

Bennett & Compton, Inc.

by: *Henry G. Bennett*

CITY OF LODI, A MUNICIPAL CORPORATION

By *Thomas A. Peterson*

Thomas A. Peterson, City Manager

CORPORATE SEAL

ATTEST:

Alice M. Reimche

Alice M. Reimche, City Clerk