

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-70

A RESOLUTION APPROVING ENTRY INTO AN  
AGREEMENT FOR PUBLIC IMPROVEMENTS  
(1700 EAST SIDEWALK PROJECT)

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met on 28 October 2014 to consider, among other things, authorizing the City's entry into an "Agreement for Public Improvements" with Frances V. Gore concerning the construction of certain public improvements at approximately 7059 South 1700 East in the City ( the "*Agreement*"), a copy of which is annexed hereto as an exhibit; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to authorize the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that the Council hereby authorizes the City's entry into the Agreement, and authorizes and directs the City's mayor and recorder to execute and deliver the Agreement on behalf of the City, subject to such modifications to the attached Agreement as the City's mayor and manager, in consultation with the City's city attorney, shall deem to be appropriate.

This Resolution, assigned no. 2014-70, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 28<sup>th</sup> day of October 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

ATTEST:



  
Kory Solorio, Recorder

By   
J. Scott Bracken, Mayor Pro Tempore

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>
Michael L. Shelton	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
J. Scott Bracken	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Michael J. Peterson	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Tee W. Tyler	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 28<sup>th</sup> day of October 2014.

**RECORDED** this 29 day of October 2014.

*[Faint, illegible markings]*

# Agreement for Public Improvements

**THIS AGREEMENT FOR PUBLIC IMPROVEMENTS** (this "*Agreement*") is entered into effective \_\_ October 2014 between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **FRANCES V. GORE**, an individual whose address is 7059 South 1700 East, Cottonwood Heights, UT 84121 ("*Owner*").

## RECITALS:

A. Owner, as the surviving member of a joint tenancy with her late husband, William Thomas Gore II, owns fee simple title to certain improved real property that is known as 7059 South 1700 East, Cottonwood Heights, UT (the "*Property*") and is designated by the Salt Lake County Assessor as tax parcel no. 22-28-201-001. The Property abuts a public street known as 1700 East.

B. City has determined that curb, gutter, five-foot sidewalk and related improvements (collectively, "*Improvements*") should be installed along the east side of 1700 East to connect currently-existing curb, gutter and sidewalk on either side, as shown on the "Proposed Sidewalk Map" (the "*Sidewalk Plan*") that is attached hereto as an exhibit. As shown on the Sidewalk Plan, this public improvement project (the "*Project*") will be constructed on the realty fronting the three properties known as 7059 South 1700 East, 7021 South 1700 East, and 7035 South 1700 East (collectively, the "*Affected Properties*").

C. The Project will include constructing Improvements along the portion of 1700 East that fronts the Property. The purpose of this Agreement is to formalize the parties' agreement for City's construction of the Improvements and for City's restoration any of the Property that is affected by such construction.

D. The parties intend to set forth herein their entire agreement regarding the Project and all related matters, and to supersede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same.

## AGREEMENT:

**NOW, THEREFORE**, in consideration of the recitals above and the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Project.** City may proceed with the Project on such timetable as City deems appropriate. City shall give Owner at least one week's prior verbal or written notice of commencement of the Project. Once commenced, City shall endeavor, through all reasonable means, to cause the Project to be diligently prosecuted to completion. Throughout the Project, City staff shall be available to consult with Owner concerning construction timing, issues, etc. in order to resolve Owner's legitimate concerns as fully and promptly as reasonably possible. The parties acknowledge, however, that any construction project, no matter how well-planned or well-managed, is disruptive. Consequently, the parties desire to be cooperative and responsive throughout the Project in order to minimize controversy and to assure that the Project is properly

completed in accordance with applicable City standards with as little adverse impact on Owner and the remaining Property as reasonably possible.

Section 2. **Mitigations.** The Property currently contains landscaping and other improvements associated with Owner's residential use of the Property which will be affected by the Project. Given City's desire to minimize the adverse impact of the Project on Owner and the remaining Property, City shall undertake the following mitigations at City's cost as part of the Project:

(a) **Removal of Encroachments.** City will remove all improvements pertaining to the Property which City reasonably believes are located outside the legal boundaries of the Property, including an existing retaining wall, fencing, driveway approaches and driveway segments.

(b) **Mailbox.** The current mailbox on 1700 East will either be reused or replaced with a comparable mailbox, and will be relocated to another place on the Property as reasonably directed by Owner. City will cause a temporary mailbox to be erected for use during the construction process, as reasonably directed by Owner.

(c) **Yard Light.** Any pole light located in the Project area will be relocated closer to the residence on the Property, as reasonably directed by Owner.

(d) **Landscaping.** Landscaping on the Property that is affected by the Project will be replaced or restored to reasonably equivalent condition as before construction commenced. City will work with Owner during the landscape restoration process to help assure that the finished result is reasonably acceptable to Owner.

(i) **Lawn; Foliage.** Affected lawn area will be restored to comparable condition as at present. Affected trees, shrubs, etc. will be replaced using mature stock that is reasonably comparable to the current foliage; provided that the parties acknowledge that the replacement foliage may be of lesser size and caliper than the current foliage due to transplanting constraints, and increased costs, of utilizing equal-sized stock.

(ii) **Sprinkling System.** Affected portions of any sprinkler system on the Property will be repaired, replaced and/or reconfigured to properly irrigate the Property, including use of comparable replacement components and revision of sprinkler "zones" to provide a properly functional whole.

(iii) **Parkstrip.** The parkstrip between the sidewalk and curb (to be constructed) fronting the Property will be constructed of stamped concrete. City will offer Owner, and the owners of the other Affected Properties, the choice of several available patterns and colors, and will install a uniform parkstrip at City's cost as part of the Project.

(d) **Access; Driveways.** Two ingress/egress points (each, an "Access") intersecting with 1700 East currently service the Property, which City believes are located outside of the legal boundaries of the Property. One Access is approximately 45 feet wide, and the other is

approximately 25 feet wide. Such Accesses will be relocated Easterly off the Project area, and will be replaced with comparable concrete entries as at present, including comparable widths. For the 45-foot-wide Access, 15 feet of asphalt driveway will be removed and replaced to match the new driveway entrance. For the 25-foot-wide Access, ten feet of asphalt driveway will be removed and replaced to match the new driveway entrance. Vehicular access to the Property during construction of the Project will be preserved as reasonably possible through use of steel plate ramps, staggering of construction of each of the replacement ramps, etc.

(e) Dust; Staging. City will adopt a construction mitigation plan designed to reasonably minimize Project-caused dust and refuse. City will require its contractors to not place construction vehicles, equipment or materials on the Property except during the limited times that such items are needed to prosecute the restoration work on the Property as contemplated by this Agreement. Worker vehicles, etc. shall not be parked on the Property or elsewhere so as to block access to the Property.

(f) Retaining Wall. A new retaining wall (the “Wall”) will be constructed to retain the Property from the new sidewalk, etc. The Wall will be constructed of reinforced concrete, with footings, entirely on the Property and outside the Project area; will be approximately three feet tall and eight inches thick; will be set back from the new sidewalk approximately one foot, with the resulting gap between the Wall and the sidewalk filled with textured concrete; and will be capped with a one-foot-tall black vinyl chainlink fence; provided, however, that the foregoing attributes of the Wall may be revised as deemed reasonably appropriate by the parties.

(g) Curb and Gutter. Curb and gutter along 1700 East will be installed as part of the Project to remedy stormwater drainage issues.

Section 3. Compensation. City believes that the entire Project area is located outside the legal boundaries of the Property. If before 1 November 2015 Owner proves by clear and convincing evidence that any part of the Project area is located within the Property and therefore is owned by Owner, then City promptly shall purchase fee simple title to such portion at the rate of \$12 per square foot upon its conveyance to City by general warranty deed, free and clear of all liens and encumbrances. Any such claim for compensation by Owner for any asserted “taking” of Property shall be presented to City in clear and comprehensive written form by 1 November 2015. Failing that, Owner’s right to compensation from City under this section 3 shall be deemed irrevocably waived and lapsed.

Section 4. Default. If either party defaults hereunder, then either party may pursue any and all legal and/or equitable remedies against the defaulting party.

Section 5. General Provisions. The following provisions are also an integral part of this Agreement:

(a) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(i) Notices. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address(es) as may be supplied by a party to the other from time to time in writing.

(j) Time of Essence. Time is the essence of this Agreement.

(k) Assignment. Owner may assign or otherwise convey its rights or delegate its duties under this Agreement only in connection with the conveyance of fee title to Owner's Property. Such assignment and delegation shall be deemed to occur automatically and contemporaneously with any such conveyance. No such conveyance shall relieve the original Owner of its obligations hereunder; instead, the original Owner shall remain liable to assure and to guaranty the full and timely performance of all of Owner's obligations hereunder notwithstanding that a successor Owner may then hold legal title to Owner's Property.

DATED effective the date first above written.

OWNER:

\_\_\_\_\_  
FRANCES V. GORE

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

SUBSCRIBED AND SWORN to before me on \_\_\_ October 2014 by **Frances V. Gore**.

\_\_\_\_\_  
Notary Public

CITY:

ATTEST:

**COTTONWOOD HEIGHTS**, a Utah municipality

By: \_\_\_\_\_  
**Kory Solorio**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

On \_\_\_ October 2014, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Kory Solorio**, who being duly sworn, did say that they are the Mayor and City Recorder, respectively, of **COTTONWOOD HEIGHTS**, and said persons acknowledged to me that said municipality executed the same.

\_\_\_\_\_  
Notary Public

