

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

751 A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
June 13, 2008

SUBJECT: Memorandum of Understanding:
Developer Constructed Drainage Facilities

RECOMMENDED MOTION: **APPROVE** the Memorandum of Understanding (MOU) between the Riverside County Flood Control and Water Conservation District (District) and the County of Riverside Transportation Department (Transportation), and **AUTHORIZE** the General Manager-Chief Engineer and Director of Transportation to negotiate and approve future amendments to the MOU.

BACKGROUND: The MOU memorializes the mutual understandings of the District and Transportation concerning the design, design review, construction, construction inspection, operation and maintenance of Developer constructed drainage facilities.

Departmental Concurrence

Juan C. Perez
Director of Transportation

FK:rg
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2007/08

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

Policy Policy

Consent Consent

Dept't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.

District: All

Agenda Number:

3.53

The Honorable Board of Supervisors
RE: Memorandum of Understanding:
June 13, 2008
Page 2 of 2

BACKGROUND:

This matter is also on the District's Board Agenda this same date and County Counsel has approved the Agreement as to legal form.

**AGREEMENT FOR THE FUNDING OF THE
VAN BUREN/I-215 INTERCHANGE EXPANSION PROJECT
BETWEEN THE COUNTY OF RIVERSIDE
AND THE MARCH JOINT POWERS AUTHORITY**

This Agreement for the Funding of the Van Buren/I-215 Interchange Expansion Project ("Agreement") is made and entered into this 4th day of June 2008, by and between the County of Riverside, a political subdivision of the State of California ("County"), and the March Joint Powers Authority ("Authority"), a California Joint Powers Authority, who together are sometimes referred to herein individually as "Party" or collectively as the "Parties."

RECITALS

1. The Riverside County Transportation Commission ("RCTC"), on behalf of the Authority and the County, has submitted an application for funding under the State's Trade Corridor Improvement Fund ("TCIF") Program. The California Transportation Commission ("CTC") has approved \$10 million in funding for the Project, defined herein.
2. In that certain "Agreement for the Provision of Governmental Municipal Services and Distribution between The County of Riverside and The March Joint Powers Authority," entered into on June 19th, 2007, the Parties agreed to designate County as the lead agency for the Project.
3. In order to be eligible to receive the \$10 million in TCIF funding, County must enter into a Project Baseline Agreement with the CTC and RCTC by July 1st, 2008.
4. As part of the Project Baseline Agreement, County will be required to make certain representations that identify the funding sources for the Project as committed and expected to be available.
5. The \$97.5 million needed for the Project is intended to be assembled from various potential funding sources, including the March JPA, Transportation Uniform Mitigation Fees (TUMF), RCTC Measure "A" Funds, right-of-way donations, and cash contributions from LNR Riverside II, LLC, the developer of the Meridian Business Park.
6. The Authority and County are diligently working to secure these funding commitments. However, not all of these funds are committed at this time since some of these funds are contingent on cash flow availability within regional programs such as TUMF and Measure "A", and the Measure "A" funds have not been fully allocated to projects by RCTC at this time.

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the County and Authority do agree as follows:

1. DEFINITIONS

1.1 "County" shall mean the County of Riverside, a political subdivision of the State of California.

1.2 "Authority" shall mean the March Joint Powers Authority, a local governmental entity composed of the member entities of the County of Riverside and the City of Riverside, the City of Moreno Valley and the City of Perris, which cities are hereinafter referred to as the "Municipal Entities," established through the adoption of a Joint Powers Agreement for the purpose of addressing the use, reuse, and joint use of the realigned March Air Force Base.

2. PURPOSE

2.1 This Agreement is intended to represent and establish the funding commitment between the Authority and the County for the construction of improvements to the Van Buren/I-215 Interchange, which is required by CTC and RCTC prior to the execution of the Project Baseline Agreement.

3. PROJECT DESCRIPTION AND FUNDING

3.1 The construction of improvements to the Van Buren/I-215 Interchange consist of a major expansion and reconfiguration of the interchange, an expanded over crossing over I-215 and the BNSF Railroad, modifications to the freeway mainline to accommodate the interchange expansion, and associated road improvements on Van Buren Blvd and the easterly frontage road ("Project").

3.2 The current estimated total cost of the Project is \$97.5 million.

3.3 The Parties acknowledge that the Project requires continued funding for Project Approval/Environmental Document preparation, for preparation of Plans, Specifications and Estimates, and for construction activity.

3.4 Construction of the Project is anticipated to start in 2011.

4. TERMS AND CONDITIONS

4.1 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above. Said Recitals are incorporated herein and made an operative part of this Agreement.

4.2 Term and Extension. The term of this Agreement shall commence on the effective date and shall remain in effect until the Notice of Completion for the Project is filed with the County or until the Agreement is amended or terminated with mutual consent of Parties.

4.3 County's Obligations. In order for the County to enter into a Project Baseline Agreement with the CTC and RCTC, County is required to identify the funding sources for the full \$97.5 million Project cost and certify that the funding sources are "committed and expected to be available" by the time the funds are needed for the Project. Within a reasonable time after the effective date of this Agreement, but no later than July 1, 2008, County shall enter into the Project Baseline Agreement with CTC and RCTC.

4.4 Authority's Obligations.

a.) Authority agrees to provide County with a list within a reasonable time after the effective date of this Agreement, but no later than July 1, 2008, identifying the potential funding sources for the \$97.5 million cost of the Project.

b.) Authority agrees that such identified funding is "committed and expected to be available" for the purpose to meet County's obligation under the Project Baseline Agreement.

4.5 Additional Obligations. In the event that the Authority is not able to secure the identified funding set forth in Section 4.4(a) on a timely basis to meet the Project schedule, the Parties shall collectively work with the CTC and RCTC to adjust the schedule so as not to forfeit the \$10 million in TCIF funds. In the event that a schedule adjustment is not approved by the CTC, Authority shall identify additional sources of revenue to replace the \$10 million of TCIF funds or County may, at its sole discretion, stop work on the Project.

4.6 No Replacement Funding By County. Nothing in this Agreement shall be construed as obligating County to provide replacement funding for any anticipated funding which is not available, or to continue with Project if funds are no longer available through the anticipated sources identified in Section 4.4(a).

5. REPORTING AND AUDITS

Each Party shall make available for inspection by the other Party, upon three (3) business days' notice, all correspondence, records, general ledgers, and books of account, insofar as they pertain to collection, remittance, and accounting for the Governmental Revenues, during the term and for a period of three (3) years following expiration or earlier termination of this Agreement. At either Party's request, such books and records may be subjected to an audit to verify their accuracy. The costs and expenses associated with such audits shall be paid by the Party requesting such audits; provided that if auditing irregularities are discovered upon completion of any audit, the Party responsible for the relevant books and records shall bear the costs associated with resolving such auditing irregularities.

6. INDEMNIFICATION

Each Party shall indemnify and hold harmless the other Party and its officers employees, agents and representatives from and against any and all costs, losses, claims, damages, liabilities, and expenses (including reasonable attorneys' fees) ("Losses") incurred or suffered by the indemnified Party resulting from a failure by the indemnifying Party to perform its obligation under or comply with the terms of this Agreement.

7. EVENTS OF DEFAULT

Failure by either Party to perform any of its obligations under this Agreement, if such failure is not cured within sixty (60) days from the receipt of notice from the other Party of a breach of any financial term of this Agreement, or within thirty (30) days from the receipt of notice from the other Party regarding a breach in the performance of any of the obligations described in this Agreement, shall be considered an “**Event of Default**” under this Agreement. Notwithstanding the foregoing, if the nature of such breach is such that the same cannot reasonably be cured within the specified period, such breach shall not be considered an Event of Default if the Party in breach of this Agreement diligently commences to cure said breach within such period and thereafter diligently proceeds to rectify and cure said breach as soon as possible.

8. TERMINATION

8.1 If Authority fails to provide the list to County identifying the potential funding sources for the total cost of the Project pursuant to Section 4.4 (a) and (b) or fails to identify additional funds in accordance with Section 4.5, County shall have the right to terminate this Agreement and have no further obligations to the Authority or to provide any further work on the Project.

8.2 In addition to the above, after providing notice in accordance with Section 7, each Party shall have the right to terminate this Agreement if the other parties fail to pay, perform or comply with, or otherwise shall breach any obligation, term or condition in this Agreement. In the event of such termination, the non-defaulting parties will be relieved of all obligations under this Agreement and may pursue all remedies allowed under law and equity.

9. PRESENTATIONS AND WARRANTIES

The Authority and the County have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective party.

10. NOTICES

All required notices under this Agreement shall be sent to the following:

County
County of Riverside
County Administration Center
4080 Lemon Street
Riverside, CA 92501
Attention: Juan C. Perez, Director of Transportation

Authority:
March Joint Powers Authority
23555 Meyer Drive
Riverside CA 92518
Attention: Executive Director

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Riverside County.

12. DISPUTES

11.1 Referral to Technical Advisory Committee. All disputes, claims, and controversies under this Agreement (“**Disputes**”) shall be referred to the Technical Advisory Committee of the Authority which shall meet within thirty (30) days of such referral to an amicable resolution of such Disputes.

11.2 Non-Binding Mediation. If a Dispute cannot be resolved by the Technical Advisory Committee, the Parties agree to submit the Dispute to non-binding mediation prior to terminating this Agreement, or filing a claim for litigation. A neutral mediator, acceptable to the Parties, shall be used to mediate the Dispute, with the costs to be share equally by the Parties.

13. RELATIONSHIP OF PARTIES

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or any other similar arrangement between the Parties. Neither Party to this Agreement shall be deemed to be a representative, an agent or an employee of the other Party. Unless otherwise expressly specified in this Agreement, neither Party shall have any authority or right to assume or create any obligation of any kind or nature, express or implied, on behalf of, or in the name of the other Party, nor bind the other Party in any respect, without the specific prior written authorization of the other Party. The obligations of the Parties shall be several and not joint.

14. AMENDMENTS

No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification is in writing and duly executed by the Parties.

15. ASSIGNMENTS

The Parties will not make any sale, assignment, conveyance or lease of any trust or power, or transfer in any other form with respect to this Agreement or the Project, without prior written approval of the other Parties.

16. WAIVER AND SEVERABILITY

Neither Party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing and signed by such Party.

Each paragraph and provision of this Agreement is severable from each other provision, and if any provision or part thereof is declared invalid, the remaining provisions shall remain in full force and effect

17. LEGAL COMPLIANCE

The Parties shall comply with all of applicable laws and regulations related to the transactions contemplated by this Agreement. Notwithstanding any other provision in this Agreement, neither Party shall be required to perform any obligation applicable to it under this Agreement if the performance of such obligation will violate any law or governmental rule or regulation applicable to such Party.

18. FURTHER ASSURANCES

Upon the reasonable request of a Party, the other Party shall take such actions, and execute such certificates, documents, or instruments, necessary or appropriate to fulfill the obligations under this Agreement.

19. HEADINGS

The section headings used in this Agreement are for convenience only and shall not be deemed to limit, construe, affect, or alter the meaning of this Agreement.

20. ENTIRE AGREEMENT

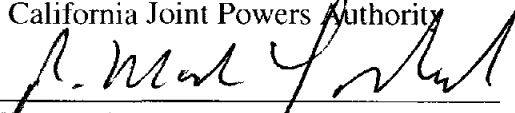
This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and shall supersede and replace any and all other prior understandings, correspondence and agreements, oral, or written, between the Parties.

21. EFFECTIVE DATE

The effective date of this Agreement is the date the parties execute the Agreement. If the parties execute the Agreement on more than one date, then the last date the Agreement is executed by a party shall be the effective date.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

MARCH JOINT POWERS AUTHORITY
a California Joint Powers Authority



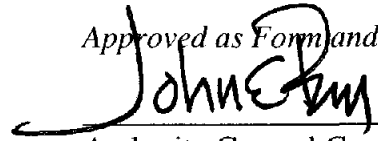
Vice Chairman

ATTEST:



Authority Secretary

Approved as Form and Content:

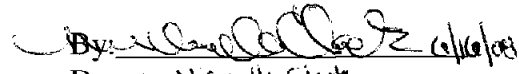


Authority General Counsel

COUNTY OF RIVERSIDE

Approved as to Form
JOE S. RANK
County Counsel

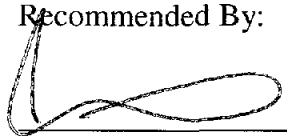
Chairman



Deputy Michelle Clark

ATTEST:
NANCY ROMERO, Clerk of the Board

Recommended By:



Juan C. Perez,
Director of Transportation

By: _____
Deputy