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

FROM: Department of Facilities Management and Transportation Department **SUBMITTAL DATE:** March 13, 2009

SUBJECT: Temporary Construction Easement Deed for the Miles Avenue and Clinton Street Road Widening Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Temporary Construction Easement Deed for a portion of Assessor's Parcel Number 608-051-017 and authorize the Chairman of the Board to execute this document on behalf of the County;
2. Authorize the Assistant County Executive Officer/EDA/FM or designee to execute any other documents and administer all actions to complete this transaction;

(Continued)

Juan C. Perez, Director
Transportation Department

Robert Field
Assistant County Executive Officer/EDA/FM

FINANCIAL DATA	Current F.Y. Total Cost:	\$14,275	In Current Year Budget:	Partially
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ -0-	For Fiscal Year:	08/09

SOURCE OF FUNDS: Transportation Uniform Mitigation Fee (TUMF) Coachella Valley Association of Governments (CVAG) (100%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

FISCAL PROCEDURES APPROVED
ROBERT E. BYRD, AUDITOR-CONTROLLER
BY: 4/20/09
SUSANA GARCIA-BOCANEGRA

FORM APPROVED COUNTY COUNSEL
BY: 3/23/09
CYNTHIA M. GUNZEL, Departmental Concurrence

Consent
 Policy

 Consent
 Policy

 Dept's Recomm.:
 Per Exec. Ofc.:

2009 MAR 13 11:30 AM
COUNTY OF RIVERSIDE

(Continued)

RECOMMENDED MOTION:

3. *Authorize the Auditor-Controller to adjust the Department of Facilities Management's FY 2008/09 budget as outlined on Schedule A; and*
4. *Authorize and allocate the sum of \$7,525 to purchase a portion of real property for a temporary construction easement, and \$6,750 to pay all related transaction costs.*

BACKGROUND:

The Miles Avenue and Clinton Street widening project, is located in the City of Indio and eastern Riverside County. In order to significantly reduce construction cost and accelerate construction of the project, the project is proposed to be constructed in three phases, under three separate contracts, as discussed below.

Phase I will widen Miles Avenue to four lanes and replace existing low water crossing at the Whitewater River with a bridge. These improvements are currently under construction.

Phase 2A will widen Miles Avenue between Madison Street and Clinton Street to four lanes and construct curb, gutter, sidewalk, and storm drain improvements within the existing right of way. These improvements are currently under construction.

Phase 2B will widen Clinton Street between Miles Avenue and Fred Waring Drive to four lanes and construct curb, gutter, sidewalk, and storm drain improvements.

The Department of Facilities Management (DOFM) has negotiated the acquisition of a temporary construction easement of a portion of Assessor's Parcel Number 608-051-017 from Sean G. Roby and Vivian M. Roby for a price of \$7,525. There are costs of \$6,750 associated with this transaction. This property is one of 18 properties located in Phase 2B of the project.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

The following summarizes the funding necessary for the acquisition of a Temporary Construction Easement of a portion of Assessor's Parcel Number 608-051-017:

Temporary Construction Easement:	\$ 7,525
Estimated Title and Escrow Charges:	\$ 1,500
Preliminary Title Report:	\$ 350
Appraisal:	\$ 1,900
DOFM Real Property Staff Time:	\$ 3,000
Total Estimated Acquisition Costs:	\$14,275

While the DOFM will cover the cost for the due diligence services (Preliminary Title Report and Appraisal) at the time of this property transaction, it is understood that the Transportation Department will reimburse DOFM for these costs. The budget adjustment attached (Schedule A) is necessary to allow this transaction. The remaining costs will be paid directly by the Transportation Department.

All costs associated with this property acquisition are fully funded in the Transportation Department's budget for FY 2008/09. Thus, no net county cost will be incurred as a result of this transaction.

SCHEDULE A

Increase Estimated Revenues:

10000-7200400000-778280	Interfund-Reimb for Service	\$2,250
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Increase Appropriations:

10000-7200400000-525400	Title Company Services	\$ 350
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10000-7200400000-524550	Appraisal Services	\$1,900
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Recorded at request of and return to:
Department of Facilities Management
Real Estate Division
On behalf of the Transportation Department
3133 Mission Inn Avenue
Riverside, California 92507-4199

FREE RECORDING
This instrument is for the benefit of the
County of Riverside, and is entitled to be
recorded without fee. (Govt. Code 6103)

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(Space above this line reserved for Recorder's use)

Contract No. 09-04-006
Riverside Co. Transportation

PROJECT: MILES AVENUE & CLINTON STREET
PARCEL: 0389-64A
APN: 608-051-017 (portion)

TEMPORARY CONSTRUCTION EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SEAN G. ROBY AND VIVIAN M. ROBY,
HUSBAND AND WIFE AS JOINT TENANTS, ("Grantor" herein),

Hereby GRANTS AND CONVEYS to the

COUNTY OF RIVERSIDE, a political subdivision ("Grantee" herein),
and its successors and assigns,

A Temporary Non-exclusive Construction Easement for construction of a road improvement project by the Grantee (the "Road" herein), in, on, and along the real property situated in the County of Riverside, State of California, identifying a portion or portions of Assessor's Parcel Number 608-051-017 referenced as Parcel 0389-64A and described on Exhibits "A" and "B" attached hereto and made a part hereof.

Other terms of Temporary Construction Easement Deed (hereinafter, the "Deed"):

1.1 County shall pay to the order of Grantor the sum of Seven Thousand Five Hundred Twenty Five Dollars (\$7,525) for the right to enter upon and use Grantor's land in accordance with the terms hereof.

2.1 The temporary construction easement, used during construction of the project consists of approximately Nine Hundred Eight (908) square feet referenced as Parcel 0389-64A and described on Exhibits "A" and "B attached hereto and made a part hereof.

3.1 The rights granted herein may be exercised for four (4) months commencing on the date that the thirty (30) day written notice by County is delivered to Grantor in accord to the notice provision herein, and concludes at the end of four months of the grant of the easement, or the conclusion of the project, whichever shall be later.

3.2 The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by Grantee, or its successors and assigns, its officers, agents and employees, and by persons or entities under contract with Grantee, its successors and assigns, wherever and whenever necessary for the purpose of constructing the Road. Grantee agrees not to damage Grantor's property in the process of performing such activities.

3.3 Reasonable access to Grantor's property across the Temporary Construction Easement shall be maintained by the Grantee at all times during the term of this Easement.

3.3 At the expiration of the Temporary Construction Easement term, Grantee shall quitclaim its interest in such property to Grantor or Grantor's successor.

3.4 At the termination of the period of use of Grantor's land by Grantee, but before its relinquishment to Grantor, debris generated by Grantee's use will be removed and the surface will be graded and left in a neat condition.

4.1 It is mutually understood and agreed by and between the parties hereto that the right to enter upon and use Grantor's land includes the right to remove and dispose of real and personal property located thereon.

5.1 Grantor shall be held harmless from all claims of third persons arising from the use by Grantee of Grantors' land.

5.2 Grantor hereby warrants that they are the owners of the property described above and that they have the right to grant County permission to enter upon and use the land.

5.3 Any notice, payment or instrument, or other documents required or permitted to be given or delivered may be given or delivered by personal delivery or by depositing the same in any United States mail depository, first class postage prepaid, and addressed as follows:

If to Grantor: Sean G. Roby and Vivian M. Roby
81-492 Helen Avenue
Indio, California 92201

If to County: COUNTY OF RIVERSIDE
Department of Facilities Management
Real Estate Division
3133 Mission Inn Avenue
Riverside, California 92507
Attention: Maribel Hyer
Real Property Agent
Phone Number: (951) 955-8431
Fax: (951) 955-4837
E-mail address: MAHyer@rc-facilities.org

Or such other person or address as either party may direct in writing to the other, provided, however, that such new or different person or address shall not become effective until acknowledged in writing by the party to who directed. Except where service is by personal delivery or by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in a United States mail depository.

5.4 Each Grantor and County affixing his or her signature to this Temporary Construction Easement Deed warrants and represents by such signature that he or she has the full legal authority to bind his or her respective party to all of the terms, conditions, and provisions therein, that his or her respective party has the full legal right, power, capacity and authority to enter into this Deed and perform all of its provisions and obligations, and that no other approvals or consents are necessary in connection therewith.

5.5 The titles and headings of Sections and Paragraphs of this Temporary Construction Easement Deed, as herein set forth, have been inserted for the sake of convenience only, and are not to be taken, deemed or construed to be any part of the terms, covenants or conditions of this Easement, or to control, limit or modify any of the terms, covenants or conditions hereof.

5.6 This Temporary Construction Easement Deed entered into between the parties dated _____, contains the entire understanding of the parties herein and supersedes any and all other written or oral understandings as to those matters contained therein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. This Deed shall be

construed and interpreted with and shall be governed and enforced in all respects according to the laws of the State of California and as if drafted by both Grantor and County. No amendment, change or modification of this document shall be valid unless in writing, stating that it amends, changes or modified this Deed, signed by all of the parties hereto. No provision contained shall be construed against the County solely because it prepared this Deed in its executed form.

5.7 This Deed and the provisions contained herein shall be binding upon and inure to the benefit of Grantor, County, and their respective heirs, executors, administrators, personal representatives, successors and assigns.

5.8 If any term, covenant, condition or provision of this Deed is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way affect, impair, or invalidate any other terms, covenant, condition or provision contained in the Deed.

5.9 Each of the parties hereto shall execute and deliver any and all additional papers, documents or other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

5.10 Grantor, their assigns and successors in interest shall be bound by all the terms and conditions contained in this Deed, and all the parties thereto shall be jointly and severally liable thereunder.


5.11 Time is of the essence of this Deed. Failure to comply with any requirement, including but not limited to any time requirement, of this Deed shall constitute a material breach of this Deed.


5.12 Subject to any other provision stated herein, in any action or proceeding between the parties hereto seeking interpretation or enforcement of any of the terms and provision of this Deed or in connection with the Easement Area, the prevailing party in such action or proceeding shall be entitled to have and to recover from the other party its reasonable attorney's fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court cost.

5.13 This Deed shall not take effect until the Board of Supervisors have approved and executed all documents.

Dated: 3/19/09

GRANTOR

By: 
Sean G. Roby

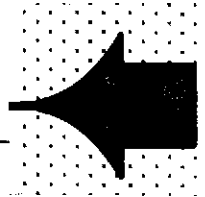
By: 
Vivian M. Roby

ATTEST:
Kecia Harper-Ihem
Clerk to the Board

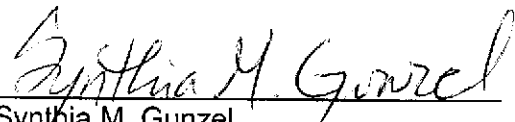
By: _____
Deputy

COUNTY OF RIVERSIDE

By: _____
Jeff Stone, Chairman
Board of Supervisors



APPROVED AS TO FORM:
Pamela J. Walls,
County Counsel

By: 
Cynthia M. Gunzel
Deputy County Counsel