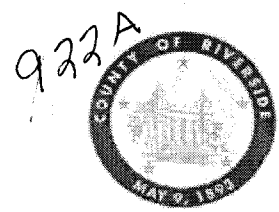


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: TLMA - Transportation Department


SUBMITTAL DATE:
December 23, 2009

SUBJECT: Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit Agreement between the County and Heller Development Company for Briggs Road transmission pole relocation associated with TR 28801-1.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the subject Agreement between the County and Heller Development Company, a California Corporation (Developer); and
- 2) Authorize the Chairman to execute the same.

BACKGROUND: The attached Agreement provides a means by which the Developer's eligible costs for construction of certain road improvements are offset against Developer's obligation to pay the applicable TUMF. The improvements include Briggs Road transmission pole relocation by Southern California Edison (SCE) along the frontage of Tract 28801-1. This utility relocation



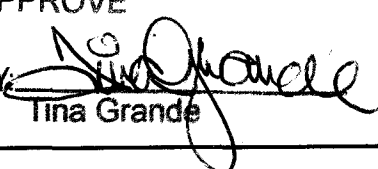
Juan C. Perez
Director of Transportation

(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:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

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

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

Prev. Agn. Ref. | District: 3 | Agenda Number:

3.55

FORM APPROVED COUNTY COUNSEL
BY: SYNTIAM GUNZE
DATE: 1-12-10
Environmental Concurrence

The Honorable Board of Supervisors

RE: Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit Agreement between the County and Heller Development Company for Briggs Road transmission pole relocation associated with TR 28801-1.

December 23, 2009

Page 2 of 2

was necessary in order to clear the right-of-way for the future widening of Briggs Road. This road is identified under the TUMF Network of Regional System of Highways and Arterials and improvements are required by conditions of approval for the Tract which is owned by the Developer.

The County estimates that as of the date of this agreement, the Developer's TUMF obligation for the Tract is \$547,940 of which the Developer has paid a total of \$420,384.

The Transportation Department has determined that the Developer would be eligible for an initial credit of \$127,556 and an initial refund of \$138,580 from the TUMF Program. Upon completion of improvements, acceptance by the County, and verification of actual costs, the Transportation Department will determine the actual credit and refund amount due to the Developer. The TUMF refund is subject to WRCOG having funds available and appropriated for payment of the refund amount.

IMPROVEMENT AND CREDIT AGREEMENT

TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

This IMPROVEMENT AND CREDIT AGREEMENT ("Agreement") is entered into this ___ day of _____, 2010, by and between the County of Riverside, a California municipal corporation ("County"), and Heller Development Company, a California corporation ("Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Developer owns approximately 14.43 acres of real property located within the County of Riverside, California, which is more specifically described in the legal description set forth in Exhibit "A", attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, Developer has requested from County certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as 71 dwelling units in Tract 28801-1, which includes Briggs Road transmission pole relocation by Southern California Edison (SCE) ("Project"); and

WHEREAS, the construction of the Project is now complete; and

WHEREAS, County Ordinance No. 824 requires Developer to pay the Transportation Uniform Mitigation Fee ("TUMF") which covers the Developer's fair share of the costs to construct transportation improvements that help mitigate the traffic impacts and burdens on the Regional System of Highways and Arterials ("RSHA") generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the RSHA; and

WHEREAS, the Required Improvements are also identified in the TUMF program as transportation improvements that are to be funded with the funds collected under the TUMF; and

WHEREAS, County and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for completion of the Required Improvements, (2) to ensure that construction of the Required Improvements is undertaken as if the Required Improvements were constructed under the direction and authority of the County, (3) to provide a means by which the Developer's costs for construction of the Required Improvements is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by the Western Riverside Council of Governments ("WRCOG"), and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for construction of the Required Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and County hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of Improvements. Developer has constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as relocations of eleven (11) SCE transmission pole along the project frontage on Briggs Road of Tract 28801-1, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by County, and which are incorporated herein by this reference (“Improvements”). Construction of the Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of County and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Improvements until all plans and specifications for the Improvements have been submitted to and approved by County. Approval by County shall not relieve Developer from ensuring that all Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Improvements and performance of Developer’s obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of County, Developer shall comply with all of the following requirements with respect to the construction of the Improvements:

(a) Developer shall obtain bids for the construction of the Improvements, in conformance with the standard procedures and requirements of County with respect to its public works projects, or in a manner which is approved by the Transportation Department.

(b) The contract or contracts for the construction of the Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of County with respect to the construction of its public works projects or as otherwise directed by the Transportation Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Improvements which they will construct in conformance with County's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the Improvements which County may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Owner shall provide proof to County, at such intervals and in such form as County may require, that the foregoing requirements have been satisfied as to all of the Owner Constructed Facilities.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with County, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. All work shall be done and the Improvements completed as shown on approved plans and specifications, and any subsequent

alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the Improvements, Developer shall undertake such design and construction changes as may be reasonably required by County. Any and all alterations in the plans and specifications and the Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Improvements. County shall not be responsible or liable for the maintenance or care of the Improvements until County approves and accepts them. County shall exercise no control over the Improvements until accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to County's acceptance of the Improvements. Developer shall maintain all of the Improvements in a state of good repair until they are completed by Developer and approved and accepted by County, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by County. If Developer fails to properly prosecute its maintenance obligation under this section, County may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. County shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by County.

5.0 County Inspection of Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Improvements, maintain reasonable and safe facilities and provide safe access for inspection by County of the Improvements and areas where construction of the Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 3115 and 3116 of the Civil Code with respect to the Improvements, Developer shall provide to County such evidence or proof as County shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to County a title insurance policy or other security acceptable to County guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of Improvements; As-Built or Record Drawings. If the Improvements are properly completed by Developer and approved by County, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, County shall be authorized to accept the Improvements. County may, in its sole and absolute discretion, accept fully completed portions of the

Improvements prior to such time as all of the Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Improvements. Upon the total or partial acceptance of the Improvements by County, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted Improvements in accordance with California Civil Code section 3093 ("Notice of Completion"), at which time the accepted Improvements shall become the sole and exclusive property of County without any payment therefore. Notwithstanding the foregoing, County may not accept any Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the County for all such Improvements. The drawings shall be certified and shall reflect the condition of the Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Improvements, for a period of one (1) year following completion of the work and acceptance by County ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of County, and to the approval of County. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following County's acceptance of the repaired, replaced, or reconstructed Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to County for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if County determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, County may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, County may

provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon County's issuance of the Notice, Developer and its surety shall be liable to County for all costs of construction and installation of the Improvements and all other administrative costs expenses as provided for in Section 9.0 of this Agreement.

10.2 Failure to Remedy; County Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to County within the time frame contained in the Notice, County may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. County's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the Improvements at the time of County's demand for performance. In the event County elects to complete or arrange for completion of the remaining work and the Improvements, County may require all work by Developer or its surety to cease in order to allow adequate coordination by County.

10.3 Other Remedies. No action by County pursuant to this Section 10.0 et seq. of this Agreement shall prohibit County from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. County may exercise its rights and remedies independently or cumulatively, and County may pursue inconsistent remedies. County may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the Improvements, Developer or its contractor shall provide County with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the estimated actual costs to construct the Improvements, as determined by County after Developer has awarded a contract for construction of the Improvements to the lowest responsive and responsible bidder in accordance with this Agreement ("Estimated Costs"). If County determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by County. Developer's compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the Improvements and all the provisions of this Agreement, to protect County if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the Improvements, Developer or its contractor shall provide County a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The County may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Improvements are accepted by County, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than ten percent (10%) of the Estimated

Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Improvements and this Agreement, Developer or its contractor shall provide County a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of County after six (6) months from the date County accepts the Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which County is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of County's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to County. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by County in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Improvements, or the plans and specifications for the Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the County, and when such forms are completed to the satisfaction of County, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless County, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of County, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of County as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by County, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name County, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to County, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering County, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against County in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish County with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by County before work pursuant to this Agreement can begin. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to County.

13.7 Insurer Rating. Unless approved in writing by County, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to County pursuant to County Ordinance No. 824 for the Transportation Uniform Mitigation Fee (TUMF) for the Project is Five Hundred Forty Seven Thousand Nine Hundred Forty Dollars (\$547,940) ("TUMF Obligation"). Notwithstanding the foregoing, Developer agrees that this Agreement shall not estoppe County from adjusting the TUMF in accordance with the provisions of County Ordinance No. 824. In addition, Developer agrees and acknowledges that Developer's final TUMF Obligation for the Project shall be calculated at the time provided in County Ordinance No. 824 and in accordance with the provisions of County Ordinance No. 824 and any Amending Ordinance in effect at such time.

14.2 Credit Offset against TUMF Obligation. Pursuant to County Ordinance No. 824 and in consideration for Developer's obligation under this Agreement to construct the Improvements, credit shall be applied by County to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.4 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has awarded a contract for construction of the Improvements to the lowest responsible bidder in accordance with this Agreement and requirements as set forth in attached Exhibit "E". Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the

Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions"). The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as "Estimated Cost". At no time will the Credit exceed the Developer TUMF Obligation. If the dollar amount of the Estimated Cost exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.5 of this Agreement. If the dollar amount of the Estimated Cost is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(1) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by County pursuant to this section.

(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by County pursuant to this section.

County shall provide Developer written notice of the determinations that County makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above. County's initial determinations pursuant to this section are set forth in attached Exhibit "G".

14.3 Verified Cost of the Improvements. Upon recordation of the Notice of Completion for the Improvements and acceptance of the Improvements by County, Developer shall submit to the County Director of Transportation the information set forth in the attached Exhibit "C". The County Director of Transportation, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in constructing the Improvements ("Verified Costs"). The County Director of Transportation will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.4 Reconciliation; Final Credit Offset Against TUMF Obligation. The actual amount of Credit that shall be applied by County to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the Improvements as determined in accordance with Section 14.2 of this Agreement (collectively "Actual Credit").

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation ("TUMF Balance"), the County Director of

Transportation shall provide written notice to Developer of the amount of the TUMF Balance and Developer shall pay the TUMF Balance in accordance with County Ordinance No. 824 to fully satisfy the TUMF Obligation (see Exhibit "F", Example A).

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.5 of this Agreement. County shall provide Developer written notice of the determinations that County makes pursuant to this section (see Exhibit "F", Example B).

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Cost, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by County from Developer for the TUMF Obligation exceed the TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and is entitled to a refund. The County Director of Transportation shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and WRCOG shall refund the Developer in accordance with County Ordinance No. 824 (see Exhibit "F", Example C).

14.5 Reimbursement Agreement. If authorized under either Section 14.2 or Section 14.4, Developer may apply to County and WRCOG for a reimbursement agreement for the amount by which the Verified Cost or Unit Cost Assumptions (whichever is less) exceeds the TUMF Obligation, as determined pursuant to Section 14.4 of this Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If County and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit "D", and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to County such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with County in a form reasonably acceptable to County, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between County and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of County.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, County shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To County: County of Riverside
Transportation Department
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Juan Perez
Director of Transportation
Phone No. (951) 955-6740
Fax No. (951) 955-6721

To Developer: Heller Development Company
18520 Burbank Blvd., #200
Tarzana, CA 91356
Attn: Joel Heller
Phone No. (818) 552-6125
Fax No. (818) 705-1911

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to County include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.16 Entire Agreement. This Agreement contains the entire agreement between County and Developer and supersedes any prior oral or written statements or agreements between County and Developer.

[Signatures of Parties on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: [Signature] Date: 2/11/10
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By: Synthia M. Gunzel Date: 1-12-10
SYNTHIA M. GUNZEL, Deputy
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: _____ Date: _____
Chairman, County Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____ Date: _____
Clerk of the Board (SEAL)

DEVELOPER

Heller Development Company,
a California Corporation

By: [Signature] Date: 11/17/05
Richard A. Heller
Printed Name
PRESIDENT
Title

By: [Signature] Date: 11/17/05
Joa K. Heller
Printed Name
SECRETARY
Title

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On 11/17/09 before me, G. Torres
Date Here Insert Name and Title of the Officer

personally appeared Richard Heller
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature G. Torres
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

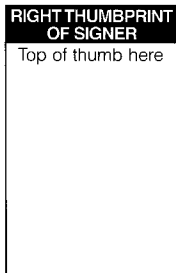
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

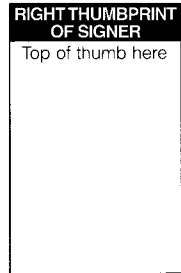
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On 11/17/09 before me, G. Torres
Date Here Insert Name and Title of the Officer

personally appeared Joel K. Heller
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~is~~ are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature G. Torres
Signature of Notary Public

Place Notary Seal Above



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- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

AND

LOCATION MAP

[ATTACHED BEHIND THIS PAGE]

EXHIBIT "A"

Lots 1 through 71, Open-Space Lot 72 of Tract 28801-1, in the County of RIVERSIDE, State of California, as per map recorded in Book 375, Pages 49 through 53, of Maps, in the office of the County Recorder of said County.

EXHIBIT A
VICINITY MAP

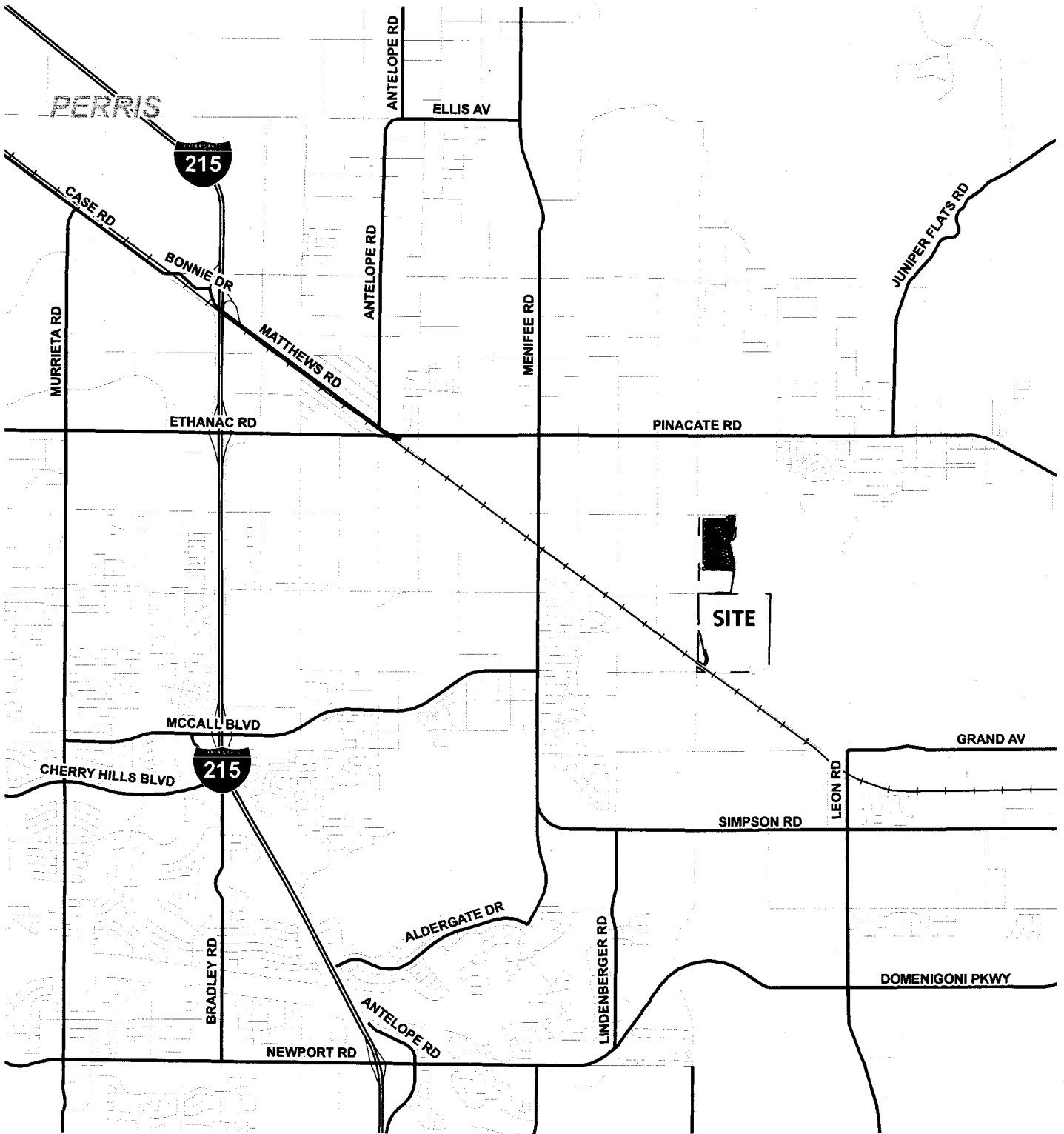


EXHIBIT "B"
FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

FAITHFUL PERFORMANCE BOND
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
(Government Code Section 66499.1)

FOR: Streets and Drainage	\$ 3,082,500.00	Tract No.	<u>28801-1</u>
Water System	\$ 564,500.00	Parcel Map No.	_____
Sewer System	\$ 313,500.00	Bond No.	<u>8383265</u>
		Premium	<u>\$39,605.00/ 2 years</u>
Developers Surety and Surety <u>Indemnity Company</u>		Principal <u>Heller Development Company, a</u> <u>California Corporation</u>	
Address <u>425 W. Broadway, #105</u>		Address <u>18520 Burbank Blvd., #200</u>	
City/State <u>Glendale, CA</u>		City/State <u>Tarzana, CA</u>	
Zip <u>91204</u>		Zip <u>91356</u>	
Phone <u>(818) 552-6125</u>		Phone <u>(818) 705-1911</u>	

WHEREAS, the County of Riverside, State of California, and Heller Development Company, a California Corporation (hereinafter designated as "principal") have entered into, or are about to enter into, the attached agreement(s) whereby principal agrees to install and complete the above designated public improvements relating to (Tract/Parcel) 28801-1, which agreement(s) is/are hereby referred to and made a part hereof; and,

WHEREAS, said principal is required under the terms of said agreement(s) to furnish bond(s) for the faithful performance of said agreement(s):

NOW, THEREFORE, we the principal and Developers Surety and Indemnity Company, as surety, are held and firmly bound unto the County of Riverside in the penal sum of Three Million Nine Hundred Sixty Thousand Five Hundred & no/100 Dollars (\$ 3,960,500.00) lawful money of the United States, for the payment of which sum will and truly be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the County of Riverside, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the County in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

FAITHFUL PERFORMANCE BOND

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of this agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further stipulates and agrees that the provisions of Section 2845 of the Civil Code and commencement of construction are not conditions precedent to surety's obligations hereunder and are hereby waived by surety.

When the work covered by the agreement is complete, the County of Riverside will accept the work and thereupon, the amount of the obligation of this bond is reduced by 90% with the remaining 10% held as security for the one-year maintenance period provided for in the agreements(s).

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on August 31, 2004.

NAME OF PRINCIPAL: Heller Development Company, a California Corporation

AUTHORIZED SIGNATURE(S): By: Wendell Heller
Title

Jul K. Heller, SECRETARY
Title
Title

(IF CORPORATION, AFFIX SEAL)

NAME OF SURETY: Developers Surety and Indemnity Company

AUTHORIZED SIGNATURE: [Signature]
Its Attorney-in-Fact Title
David Noddle, Attorney in Fact

(IF CORPORATION, AFFIX SEAL)

ATTACH NOTARIAL ACKNOWLEDGMENT OF SIGNATURES OF PRINCIPAL AND ATTORNEY-IN-FACT.

FORM APPROVED
COUNTY COUNSEL

OCT 12 2004

BY [Signature]
ASSISTANT COUNTY COUNSEL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

} ss.

On 9/27/2004 before me, Ismael A. Martinez

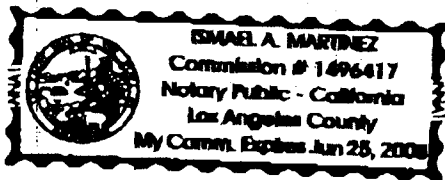
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard Heller & Joel K. Heller

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~before~~ they executed the same in ~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Ismael A. Martinez
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On August 31, 2004 before me, Christopher John Rizzotti, Notary Public
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared David Noddle
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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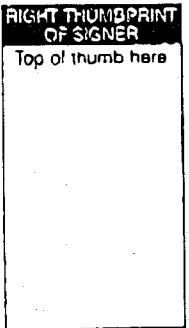
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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

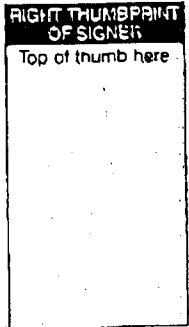
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

MATERIAL AND LABOR BOND
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
(Government Code Section 66499.1)

FOR: Streets and Drainage	\$ <u>1,541,250.00</u>	Tract No. <u>28801-1</u>
Water System	\$ <u>282,250.00</u>	Parcel Map No. _____
Sewer System	\$ <u>156,750.00</u>	Bond No. <u>838326S</u>
		Premium <u>included with</u>
Developers Surety and		<u>performance bond</u>
Surety Indemnity Company	Principal* <u>See</u>	
Address <u>425 W. Broadway, #105</u>	<u>Below</u>	
City/State <u>Glendale, CA</u>	Address <u>18520 Burbank Blvd., #200</u>	
Zip <u>91204</u>	City/State <u>Tarzana, CA</u>	
Phone <u>(818) 552-6125</u>	Zip <u>91356</u>	
	Phone <u>(818) 705-1911</u>	

* Principal - Heller Development Company, a California Corporation
WHEREAS, the County of Riverside, State of California, and Heller Development
Company, a California Corporation

(hereinafter designated as "principal") have entered into, or are about to enter into, the attached agreement(s) whereby principal agrees to install and complete the above designated public improvements relating to (Tract/Parcel) 28801-1, which agreement(s) is/are hereby referred to and made a part hereof; and,

WHEREAS, under the terms of said agreement, principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the County of Riverside to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California;

NOW, THEREFORE, said principal and the undersigned, as corporate surety, are held firmly unto the County of Riverside and all contractors, subcontractors, laborers, material persons and other persons employed in the performance of said Civil Code in the sum of One Million Nine Hundred Eighty Thousand Two Hundred Fifty & no/100 Dollars (\$ 1,980,250.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the County in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed upon that this bond shall inure to the benefit of any and all persons, companies and corporations entitles to full claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

MATERIAL AND LABOR BOND

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of this agreement or to the specifications accompanying the same shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further stipulates and agrees that the provisions of Section 2845 of the Civil Code are not a condition precedent to surety's obligations hereunder and are hereby waived by surety.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on August 31, 2004.

NAME OF PRINCIPAL: Heller Development Company, a California Corporation

AUTHORIZED SIGNATURE(S): By: *Paul and Helly*
Title

Jul K. Heller, SECRETARY
Title

Title

(IF CORPORATION, AFFIX SEAL)

NAME OF SURETY: Developers Surety and Indemnity Company

AUTHORIZED SIGNATURE: *[Signature]*
Its Attorney-in-Fact
David Noddie, Attorney in Fact Title

(IF CORPORATION, AFFIX SEAL)

ATTACH NOTARIAL ACKNOWLEDGMENT OF SIGNATURES OF PRINCIPAL AND ATTORNEY-IN-FACT.

FORM APPROVED
COUNTY COUNSEL

OCT 12 2004

BY *[Signature]*
ASSISTANT COUNTY COUNSEL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

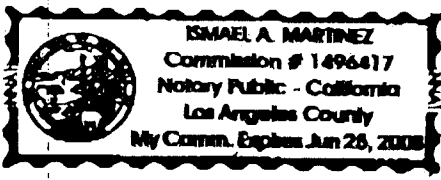
} ss.

On 9/27/2004 before me, Ismael A. Martinez
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard Haller a Joel K. Heller
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

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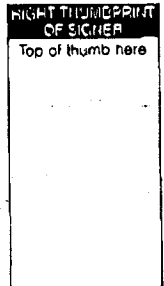
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer - Title(s) _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

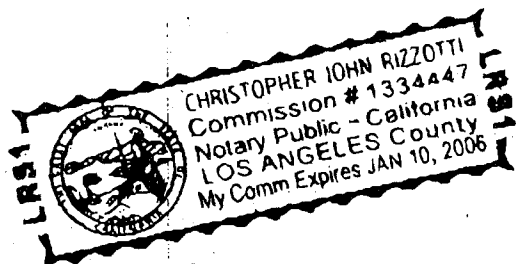
State of California

County of Los Angeles

On August 31, 2004 before me, Christopher John Rizzotti, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared David Noddle
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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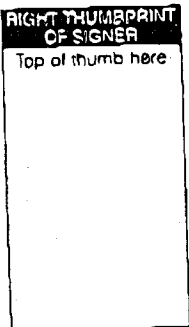
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Signer's Name: _____

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- Corporate Officer
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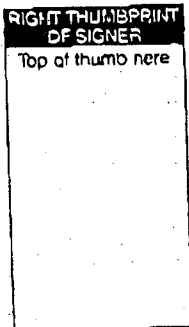
Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
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- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO BOX 19725, IRVINE, CA 92623 (949) 263-3300**

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each, hereby make, constitute and appoint:

*****David Noddle, Renee Tarica, jointly or severally*****

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney.

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective Executive Vice President and attested by their respective Secretary this 1st day of October, 2003.

By: [Signature]
David H. Rhodes, Executive Vice-President

By: [Signature]
Walter A. Crowell, Secretary

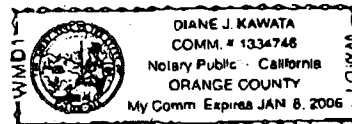


STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

On October 1, 2003, before me, Diane J. Kawata, personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal

Signature [Signature]



CERTIFICATE

The undersigned, as Senior Vice-President, Underwriting of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 31st day of August, 2004

By [Signature]
Wesley W. Cowling, Senior Vice-President, Underwriting



DISCLOSURE RIDER

Terrorism Risk Insurance Act of 2002

The Terrorism Risk Insurance Act of 2002 created a three-year program under which the Federal Government will share in the payment of covered losses caused by certain events of international terrorism. The Act requires that we notify you of certain components of the Act, and the effect, if any, the Act will have on the premium charged for this bond.

Under this program, the Federal Government will cover 90% of the amount of covered losses caused by certified acts of terrorism, as defined by the Act. The coverage is available only when aggregate losses resulting from a certified act of terrorism exceed \$5,000,000.00. Insurance carriers must also meet a variable deductible established by the Act. The Act also establishes a cap of \$100 billion for which the Federal Government or an insurer can be responsible.

Participation in the program is mandatory for specified lines of property and casualty insurance, including surety insurance. The Act does not, however, create coverage in excess of the amount of the bond, nor does it provide coverage for any losses that are otherwise excluded by the terms of the bond, or by operation of law.

No additional premium has been charged for the terrorism coverage required by the Act.

Developers Surety and Indemnity Company
Indemnity Company of California
17780 Fitch, Suite 200
Irvine, CA 92614
(949) 263 3900
www.InscoDico.com

EXHIBIT "C"

DOCUMENTATION TO BE PROVIDED TO COUNTY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist County in determining the Construction Costs for a completed Improvement, Developer shall provide the following documents to County:

1. Plans, specifications and Developer's civil engineer's cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by County to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT "D"

REIMBURSEMENT AGREEMENT

TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

THIS REIMBURSEMENT AGREEMENT ("Agreement") is executed this ____ day of _____, 20__, by and among the County of Riverside, a California municipal corporation ("County"), and _____ ("Developer"). County and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, County and Developer are parties to an agreement dated _____, 20__, entitled "Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.4 of the Credit Agreement provide that Developer is obligated to pay County the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and County accepts the Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to County and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, County has consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Cost or Unit Cost Assumptions (whichever is less) exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. County and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount of approximately [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). WRCOG shall pay the Reimbursement Amount to County, and the County shall be responsible for transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Sections 14.2, 14.3, and 14.4 of the Credit Agreement, and one hundred percent (100%) of the approved unit cost assumptions for the Improvements in effect at the time of the contract for the Improvements was awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement Amount unless and until (i) the Improvements are completed and accepted by County in accordance with the Credit Agreement, (ii) the Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, and (iii) WRCOG has funds available and appropriated for payment of the Reimbursement Amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement Amount is made to Developer by WRCOG through County.

6.0 Affirmation of Credit Agreement. County and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. County and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. County and

Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

7.0 Incorporation into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit "D" to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.5, and Sections 15.0 through 15.16.

[Signatures of Parties on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: _____ Date: _____
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By: _____ Date: _____
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: _____ Date: _____
Chairman, County Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____ Date: _____
Clerk of the Board (SEAL)

DEVELOPER

[Developer Name]

By: _____ Date: _____

Printed Name

Title

By: _____ Date: _____

Printed Name

Title

EXHIBIT "E"

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
 - a. Prepare a separate bid package for the TUMF Improvements.
 - b. The plans, cost estimate, specifications and contract documents shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
 - c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the County.
 - d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the County's requirements and guidelines.
 - e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.

2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between County and Developer ("Agreement"), Developer shall provide the County and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the County and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.

3. Prior to the County's acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.3 and 14.4 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the County's inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the County shall have provided the Developer a final inspection release letter.
 - d. County shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
 - e. Developer shall have provided County a copy of the As-Built plans for the TUMF Improvements.
 - f. Developer shall have provided County copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.
 - g. Developer shall have submitted a documentation package to the County to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:
 - i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.

- ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for County verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred), showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee.
4. The amount of the development credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the RSHA in the adopted Nexus Study, or actual costs whichever is less. This shall be known as the maximum credit. The maximum TUMF credit shall be determined based on an approved Improvement Plan and after the Conditions of Approval have been determined.

EXHIBIT "F"

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units:
200 SF dwelling units @ \$6,650 / dwelling unit = \$1,330,000 in fees (TUMF Obligation)

Example A: TUMF BALANCE

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less:	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)
RECONCILIATION	
TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,200,000</u>
TUMF Balance (Payment to TUMF):	\$130,000

Example B: REIMBURSEMENT

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less:	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)
RECONCILIATION	
TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,500,000</u>
Reimbursement Agreement with Developer (Based on Priority Ranking):	(\$170,000)

Example C: TUMF OVERPAYMENT

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,200,000) or unit Cost Assumption (\$1,500,000) whichever is less:	<u>\$1,200,000</u>
Remaining TUMF Obligation:	\$130,000
Prorated Fee: \$130,000 / 200 du =	\$650 / du
RECONCILIATION	
Actual Credit:	\$1,300,000
TUMF payments from Developer (\$650 per unit x 200 units):	<u>\$130,000</u>
Actual Credit plus TUMF Payment:	\$1,430,000
TUMF Obligation:	
Actual Credit plus TUMF Payment:	<u>\$1,430,000</u>
TUMF Overpayment (Refund to Developer):	(\$100,000)

EXHIBIT G

Heller Development Company
Tract 28801-1
IP000014

Initial TUMF Credit Summary

List of eligible streets/facilities under the TUMF Program for subject tract:

Briggs Road (Relocation of 11 SCE Poles) Central TUMF Zone

Initial Credit shall be equal to the lesser of the following:

TUMF Obligation (see next page for Details)	\$	547,940
TUMF Unit Cost Assumption (see next page for Details)	\$	417,598
Improvement Cost (Actual Cost) (see below for details)	\$	266,136

Improvement Costs Breakdown

Street Improvement Construction Cost	\$	-
Right of Way Cost	\$	-
Utility Relocation (Actual Cost)	\$	266,136
Planning, Engineering, Construction Management, Geotechnical Services	\$	-
Improvement Cost Total	\$	266,136

Initial TUMF Credit:

Initial Credit (Obligation, Low Bid or Unit Cost Assumption, whichever is less)	\$266,136
Unpaid units	13
Prorated Credit per each unpaid unit (up to max TUMF fee per unit)	\$9,812
Total Credit to be applied to unpaid units	\$127,556

TUMF Refund¹:

Initial Credit amount + paid TUMF amount	\$686,520
Refund (Credit + paid TUMF amount that exceeds Obligation amount)	\$138,580

TUMF Reimbursement:

Cost (Low Bid or Unit Cost Assumption, whichever is less)	\$266,136
TUMF Credit/Refund	(\$266,136)
Estimated TUMF Reimbursement (Cost exceeding Obligation amount)	\$0

Note 1: The TUMF refund is subject to WRCOG having funds available and appropriated for payment of the refund amount. At WRCOG's option, refunds may be paid out in installments and the Developer shall not be entitled to any interest or cost adjustment for any delay between the time when the dollar amount of the refund is determined and the time when payment of the refund amount is made to Developer.

Heller Development Company
 Tract 28801-1
 IP000014

TUMF OBLIGATION CALCULATION

Dwelling Unit Type (Paid)	Fee per Unit	Units	Amount
Single Family Residential	\$ 7,248	58	\$ 420,384
	Paid Subtotal	58	\$ 420,384

Dwelling Unit Type (Unpaid)	Fee per Unit	Units	Amount
Single Family Residential	\$ 9,812	13	\$ 127,556
	Unpaid Subtotal	13	\$ 127,556
	Obligation Total	71	\$ 547,940

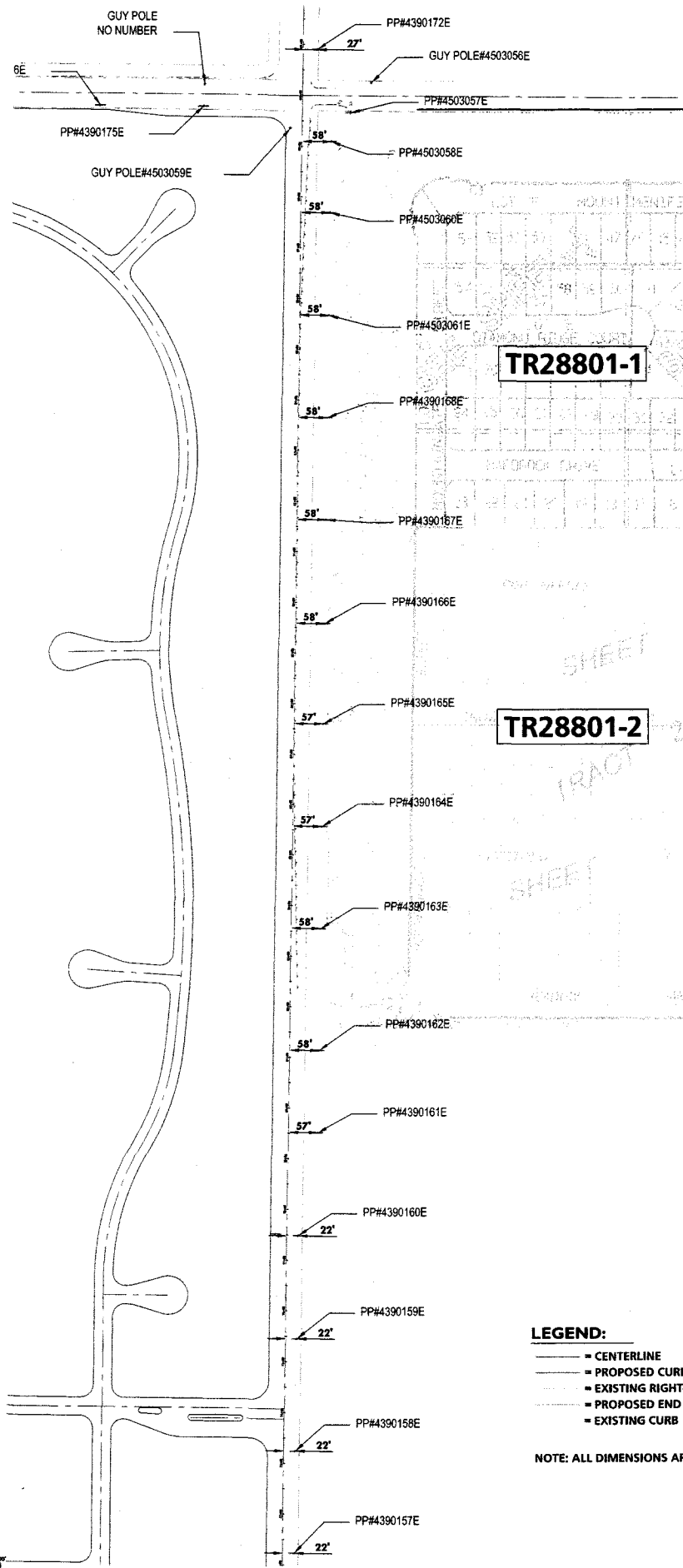
TUMF UNIT COST ASSUMPTION CALCULATION (2007 Costs)

Central TUMF Network Road Segment applicable to Proposed Improvements	Cost Item	Amount
Briggs Road, SR-74 (Pinacate) to Simpson Road		
Network Distance: 2.488 miles	Road Const	\$ -
Existing Lanes: 0	ROW/Utilities	\$ 5,115,000
Increase in Lanes: 4	Planning (10%)	\$ -
	Engring (25%)	\$ -
	Conting (10%)	\$ 511,500
	Network Road Segment Cost Est	\$ 5,626,500
	Network Unit Cost per Lane mile	\$ 565,364
	Network Unit Cost per Lane foot	\$ 107

Road Improvement Cost Estimate (based on Network Unit Cost per Lane foot)

Lane	Construction Limits (Sta. to Sta.)	Linear Feet	Amount
1	79+50.00 99+00.00	1,950	\$ 208,799
3	79+50.00 99+00.00	1,950	\$ 208,799
	TUMF Total	3,900	\$ 417,598

TOTAL TUMF UNIT COST ASSUMPTION FOR ELIGIBLE IMPROVEMENTS	\$ 417,598
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TR28801-1

TR28801-2

- LEGEND:**
- CENTERLINE
 - PROPOSED CURB
 - EXISTING RIGHT-OF-WAY
 - PROPOSED END OF PAVEMENT
 - EXISTING CURB

NOTE: ALL DIMENSIONS ARE APPROXIMATE

