

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

542A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
October 21, 2010

**SUBJECT:** Memorandum of Understanding (MOU) with Western Riverside Council of Governments (WRCOG) and the City of Menifee for Community Facilities District (CFD) No. 07-1 (Newport/I-215 Interchange)

**RECOMMENDED MOTION:** That the Board of Supervisors:  
Approve the subject MOU with WRCOG and the City of Menifee, and authorize the Chairman to execute the same.

**BACKGROUND:** In January 2008, the Board approved the establishment of CFD No. 07-1, and a subsequent election approving the formation of this CFD was certified in April 2008. This CFD will be a funding vehicle for the Newport/I-215 Interchange Improvement Project. The Project includes the reconstruction of the Newport Road Interchange at Interstate 215, including full-width street

Juan C. Perez  
Director of Transportation

JCP:gh  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	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
<b>SOURCE OF FUNDS:</b> 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**

FORM APPROVED COUNTY COUNSEL  
BY:   
CYNTHIA M. GUNZEL  
DATE: 10-18-10  
Departmental Concurrence

Dept's Recomm.:  Consent  Policy

Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.** 4/29/08, Item 8.1 | **District:** 3 | **Agenda Number:**

**3.58**

The Honorable Board of Supervisors

RE: Memorandum of Understanding (MOU) with Western Riverside Council of Governments (WRCOG) and the City of Menifee for Community Facilities District (CFD) No. 07-1 (Newport/I-215 Interchange)

October 21, 2010

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improvements to Newport Road between Haun Road and Antelope Road to meet existing and future traffic demands. The construction is planned to begin in late 2012, however, the start of construction is contingent upon an improved housing market to a level that would allow the County to sell the CFD bonds.

This MOU provides the mechanism by which developers can be eligible to receive TUMF credits to offset their TUMF fees by participating in CFD No. 07-1. The CFD boundary includes areas in both the City of Menifee and unincorporated County. The Newport/I215 Interchange is included as a TUMF Network facility. In the future, the County and/or the City will process TUMF Credit Agreements with developers for specific development projects in accordance with this MOU.

Project Number: B50682

**MEMORANDUM OF UNDERSTANDING**

**Between the  
Western Riverside Council of Governments  
and the County of Riverside  
and the City of Menifee**

**Community Facilities District No. 07-1 (Newport/I-215 Interchange)  
of the County of Riverside**

This Memorandum of Understanding (this "MOU") is dated as of \_\_\_\_\_ and is hereby entered into between Western Riverside Council of Governments, a joint powers agency ("WRCOG"), and the County of Riverside, a political subdivision of the State of California (the "County"), and the City of Menifee, a political subdivision of the State of California (the "City").

**RECITALS**

A. The County/City, by the adoption of Ordinance No. 824, as amended from time to time (the "TUMF Ordinance"), established the Transportation Uniform Mitigation Fee Program (the "TUMF Program") which requires a developer to pay a fee (the "TUMF") which is set by said TUMF Ordinance and which is to be paid as a condition of receiving a certification allowing for the occupancy of a residential or commercial structure; the TUMF is intended to represent a new structure's fair share of the estimated costs to construct those transportation improvements needed to mitigate the traffic impacts and burdens placed on the Regional System of Highways and Arterials ("RSHA") generated by a residential or commercial development and determined necessary to protect the safety, health and welfare of persons traveling to and from such residential or commercial development using the RSHA.

B. Under the terms of the TUMF Ordinance, the County/City is responsible for the collection of the TUMF for property that is developed within its jurisdictional boundaries.

C. The County of Riverside by Resolution No. 2008-034 established Community Facilities District No. 07-1 (Newport/I-215 Interchange) of the County of Riverside ("CFD No. 07-1") pursuant to the terms of the Mello-Roos Community Facilities Act of 1982, as amended, (Sections 53311 et seq. of the California Government Code) to finance the planning, design, acquisition, and construction of the Newport Road/I-215 Interchange improvements (the "Project"). The Boundary Map for CFD No. 07-1 is attached hereto marked as Exhibit A. In the future, additional properties may at their request, either annex into CFD No. 07-1 or form a stand alone district to fund their contribution to the Project.

D. CFD No. 07-1 is authorized, among other things, to levy a special tax to pay for the design and construction of the Project or to incur bonded indebtedness in an aggregate principal amount not to exceed \$60,000,000 to pay the costs of the Project.

E. The Project is part of the RSHA and is eligible for funding through the TUMF Program.

F. WRCOG has responsibility for the administration of the TUMF Program and has adopted its "Administrative Plan" (the "Administrative Plan") which has been amended from time to time, the most recent amendment being adopted as of August 4, 2008. Section VI of the Administrative Plan sets forth the conditions under which a member jurisdiction, such as the County/City, may issue a credit against all or a portion of the TUMF that would otherwise be charged to a developer for constructing a residential unit or other structure within the boundaries of said jurisdiction. Section VI specifically addresses those conditions under which a credit may be extended to those developers who are participating in a community facilities district.

G. For Fiscal Year 2007-08, WRCOG has identified that TUMF totaling approximately \$30,501,000 is eligible to be applied toward the right-of-way purchase, construction, and related soft costs associated with the planning, design, right-of-way purchase and construction of the Project. These dollar amounts may be adjusted each fiscal year by an amount equivalent to an engineering inflator identified in the TUMF Ordinance (the "Engineering Inflator").

H. WRCOG, through the Central Zone Transportation Improvement Program ("TIP") approval process, has authorized a cash contribution of approximately \$3,900,000 towards the Project.

I. This MOU is not intended to reduce the overall responsibility of Property Owners, as defined below, to contribute to the Project, but is intended to provide a mechanism for the County/City to provide funding for the Project through a variety of funding sources. As such, it is the intent of the Parties that there are no third party beneficiaries of any right or obligation assumed by the Parties herein. The MOU does not modify the WRCOG TUMF Administrative Plan, and shall be construed in a manner consistent with the Administrative Plan. TUMF credits authorized hereunder shall be calculated and administered in accordance with the Administrative Plan.

J. The County, City and WRCOG desire to enter into this MOU to establish the terms by which credits for the TUMF (the "TUMF Credit") can be extended to the property owners (the "Property Owners") within the boundaries of CFD No. 07-1.

### **OPERATIVE PROVISIONS**

**NOW, THEREFORE,** County, City and WRCOG hereby state their mutual understandings as follows:

Section 1. The facts stated in the Recitals are true and correct.

Section 2. No special tax bonds will be sold and issued by CFD No. 07-1 for any portion of the Project until the design engineering and bid specifications are ready for advertisement and award of a construction contract. Presently, it is anticipated that a bond series to finance the acquisition and construction of the Project will be issued in Fiscal Year 2011-12. The County/City estimates the time to complete the Project for which bonds have been sold and issued to be between 18 to 30 months.

Prior to the sale of any bonds, CFD No. 07-1 is authorized by the Rate and Method of Apportionment of Special Tax (the "RMA") to levy a special tax (the "Special Tax") on any residentially developed parcel that is to be applied toward the construction of the Project.

Section 3. All Special Taxes levied and collected by CFD No. 07-1 prior to the sale of bonds are to be deposited into a segregated account by the administrators of CFD No. 07-1. Said Special Taxes may only be applied to pay for (i) the right-of-way purchase, construction, and related soft costs associated with the planning, design, right-of-way purchase and construction of the Project, (ii) to reimburse cash advances made by certain property owners participating in CFD 07-1 for the environmental, design, and right-of-way phases of the Project, or (iii) to satisfy the TUMF obligation of the residential unit(s) pursuant to Section 13 below.

Section 4. If at the time the design engineering for the Project is such that a bond series could be issued by CFD No. 07-1, but either the level of development within CFD No. 07-1 or the appraised value of the property within CFD No. 07-1 are not sufficient to allow CFD No. 07-1 to issue said bond series or market conditions are such that the issuance of said bond series would not be advisable, then CFD No. 07-1 will continue to levy the Special Tax consistent with the provisions of Section 12 below.

Section 5. CFD No. 07-1 is structured so that the possible annexation of property beyond the boundaries as shown on Exhibit A may be allowed in the future. It is the intent of the administrators of CFD No. 07-1 to analyze whether annexation into CFD No. 07-1 is beneficial, or whether a new stand alone community facilities district would be more advantageous. Either way, the County/City would not issue TUMF Credits in an amount that is greater than the amount allowed by the TUMF Program for construction of the Project, which will be an amount equal to the dollar amount allowed for the construction of the Project as established by the TUMF Program for the fiscal year in which the last credit is issued.

Section 6. The County has established Zones B, C, D and E of the Menifee Valley Road and Bridge Benefit District (the "Menifee Valley RBBD") which is identified as Exhibit B, and which would identify the boundaries of the area in which potential annexations could occur or new stand alone districts could be formed to finance the Project. If the actual construction costs for the Project exceed the total dollar amount against which TUMF Credits can be issued, the construction cost shortfall may be secured through those fees to be collected through the Menifee Valley RBBD, and other sources available to the County/City.

Section 7. The County, by establishing CFD No. 07-1 and the Menifee Valley RBBD and issuing the Special Tax Bonds, assumes full responsibility for the design, engineering, funding and construction of the Project. The County/City will diligently pursue the design and construction of the Project and will keep WRCOG regularly informed as to the status.

Section 8. It will be the responsibility of the County/City, working in coordination with the Special Tax Advisor for CFD No. 07-1, to determine the amount of TUMF Credit that will be provided to any residential unit within a specific tract. The TUMF Credit will be issued

consistent with the provisions of the Administrative Plan. The TUMF Credit to be extended to any residentially developed parcel within CFD No. 07-1 is set forth in Section 12 below.

Section 9. The amount of any TUMF Credit issued by the County/City for parcels within CFD No. 07-1 will require that four percent (4%) of the TUMF representing the estimated maximum cost for administering the TUMF Program (the "Program Administration Amount") is to be paid in cash at the time of the issuance of the building permit or certificate of occupancy in accordance with the TUMF Ordinance and will be transferred by the County/City to WRCOG consistent with the Administrative Plan. The percentage that WRCOG may apply for the Program Administration Amount is to be the annual percentage approved by WRCOG for such purposes, which currently may not exceed 4%. Any funding differences between the 4% being paid to WRCOG and the actual administrative costs incurred by WRCOG shall be allocated in accordance with the WRCOG Administrative Plan and applicable agreements.

Section 10. No TUMF or any portion thereof is expected to be collected at the time a building permit is issued for the model residential units for a residential subdivision tract. The TUMF Credit for the model units will be determined consistent with Sections 9 and 12, herein, and the TUMF in excess of the TUMF Credit is expected to be collected for the model units at the time the certificate of occupancy is issued for said units and all amounts collected will be paid to WRCOG consistent with the Administrative Plan.

Section 11. Upon two days' written notice, WRCOG staff can request to review the accounting records of the County/City and CFD No. 07-1 as to the collection of the TUMF from those properties within the boundaries of CFD No. 07-1 and the expenditure of Special Tax and bond proceeds toward the construction of the Project. Such an inspection is to occur within the normal business hours of the County/City.

Section 12. (a) Planning, design and engineering for the Project has commenced for the Project. The County/City expects that the funds to pay the costs of the Project will be derived from multiple sources. It is anticipated that a portion of the Project will be financed with proceeds of bonds issued by CFD No. 07-1 and that, upon such issuance, the property within the boundaries of CFD No. 07-1 (the "Property") will be excused from the payment of the TUMF Credit applicable to such Property as set forth herein. The County/City expects that, prior to the issuance of bonds, a portion of the Property will have reached the stage of development at which certificates of occupancy are to be issued. The County/City desires to implement a mechanism that will allow such certificates of occupancy to be issued while, at the same time, providing security for the payment of the TUMF applicable to such Property if bonds are not issued.

(b) If, on or prior to the date three years from the date the first TUMF Credit is issued (in respect of a Certificate of Occupancy), bonds are issued by CFD No. 07-1, the Property owned by each of the Property Owners shall, pursuant to Section VI.B.1. of the Administrative Plan, be excused from the payment of the TUMF Credit, provided, however, that the TUMF Credit for such Property shall not exceed an amount equal to 96% of the TUMF then applicable to such Property. After such issuance of bonds, each Property Owner, in order to receive a certificate of occupancy for improvements constructed on Property owned by such Property Owner, shall be required to pay to the County/City (i) the amount by which the amount of the TUMF then applicable to such Property exceeds the TUMF Credit for such Property, provided that such

amount shall not be less than an amount equal to the Program Administration Amount applicable to such Property. The County/City shall, in accordance with the Administrative Plan, deliver to WRCOG any such portion of a TUMF in excess of the applicable TUMF Credit received by the County/City, including any such Program Administration Amount received by the County/City.

(c) If, prior to the issuance of bonds by CFD No. 07-1, a Property Owner requests that a certificate of occupancy be issued for improvements constructed on Property owned by such Property Owner, (i) such Property Owner shall pay to the County/City the Program Administration Amount applicable to such Property, and (ii) such Property Owner shall deposit with the County/City, as a security deposit, an amount equal to the TUMF Credit (the "TUMF Security Amount"), or deposit with the County/City an Irrevocable Letter of Credit in an amount equal to the TUMF Security Amount and in a form which is satisfactory to the County/City and WRCOG. After satisfying both conditions above, the County/City may issue a TUMF Credit to such Property Owner for such TUMF and, upon a determination by the County/City that all other conditions to the issuance of such certificate of occupancy have been satisfied, the County/City may issue such certificate of occupancy. The County/City shall, in accordance with the Administrative Plan, transmit to WRCOG any such Program Administration Amount received by the County/City. The County/City shall deposit any TUMF Security Amount received into an account established with the County/City Treasurer (the "TUMF Security Fund"). The amounts in the TUMF Security Fund shall be kept separate and apart from other funds held by the County/City Treasurer and shall be invested by the County/City Treasurer in accordance with the County/City investment policies. All investment earnings on amounts on deposit in the TUMF Security Fund shall be retained therein until disbursed in accordance with this Section.

(d) If, on or prior to the date three years from the date the first TUMF Credit is issued (in respect of a Certificate of Occupancy), bonds are issued by CFD No. 07-1, the County/City shall release the letter(s) of credit for each Property Owner that deposited with the County/City said letter(s) of credit, or the County/City shall pay from the TUMF Security Fund to each Property Owner that deposited with the County/City a TUMF Security Amount (i) an amount equal to such TUMF Security Amount, and (ii) a pro rata share of the investment earnings, as determined by the County/City, on amounts held in the TUMF Security Fund during the period in which such TUMF Security Amount was on deposit therein.

(e) If, as of the date three years from the date the first TUMF Credit is issued (in respect of a Certificate of Occupancy), the bonds have not been issued by CFD No. 07-1, the County/City shall (i) to the extent that Special Taxes collected with respect to Property for which a letter of credit or TUMF Security Amount was deposited with the County/City remain unexpended and unencumbered, reduce the letter of credit in an amount equal to such unexpended and unencumbered Special Taxes or transfer from the TUMF Security Fund to the Property Owner that deposited such TUMF Security Amount an amount equal to such unexpended and unencumbered Special Taxes, (ii) transfer to WRCOG all such unexpended and unencumbered Special Taxes, and (iii) after having made all transfers required to be made pursuant to the preceding clause (i), draw on the letter of credit in the full remaining stated amount and transfer such funds to WRCOG or transfer to WRCOG all remaining amounts then on deposit in the TUMF Security Fund, including all investment earnings therein; provided, however, that the County/City shall not be required to so transfer such amounts if, prior to such date, the County/City and WRCOG have entered into an agreement pursuant to Section VI.B.1.1.(c) of the

Administrative Plan. Upon such transfer, the TUMF applicable to each portion of the Property for which, in accordance with this subsection, the letter of credit was posted or the TUMF Security Amount was deposited with, and the WRCOG Administrative Amount was paid to, the County/City shall be deemed to have been paid as and when due.

(f) If, on the date three years from the date the first TUMF Credit is issued (in respect of a Certificate of Occupancy), the Bonds have not been issued by CFD No. 07-1, to the extent that Special Taxes collected with respect to Property for which a letter of credit or TUMF Security Amount was deposited with the County/City have been expended on or encumbered for costs of the Project, such Property Owner shall be deemed to have contributed the portion of the Project for which such Special Taxes were so expended or encumbered, and such Property Owner shall receive a credit, if any, against TUMF up to the amount so expended or encumbered as calculated in accordance with the WRCOG TUMF Administrative Plan, which credit may subsequently be applied by such Property Owner against all or a portion of the TUMF applicable to Property owned by such Property Owner.

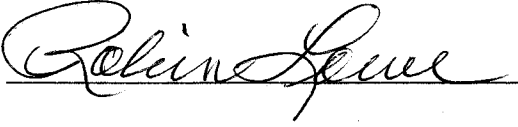
Section 13. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

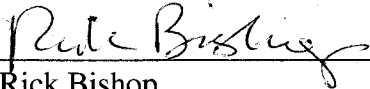
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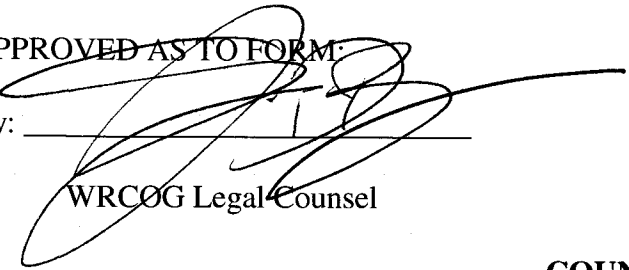


IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above written.

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

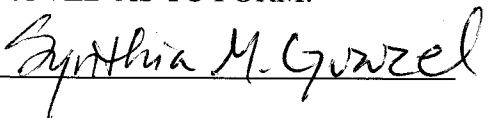
By:   
Chairwoman

By:   
Rick Bishop  
Executive Director

APPROVED AS TO FORM:  
By:   
WRCOG Legal Counsel

**COUNTY OF RIVERSIDE**

By: \_\_\_\_\_  
Chairman, Board of Supervisors

APPROVED AS TO FORM:  
By:   
Pamela J. Walls  
County Counsel  
**SYNTHIA M. GUNZEL** Deputy

ATTEST:  
Kecia Harper-Ihem  
Clerk of the Board  
By: \_\_\_\_\_  
Deputy

**CITY OF MENIFEE**

Passed on this \_\_\_ day of \_\_\_\_\_, 2009

By: Wallace W Edgerton

Wallace W. Edgerton, Mayor

ATTEST:

By: Kathy Bennett

Kathy Bennett, City Clerk

APPROVED AS TO FORM:

By: Elizabeth Martyn

Elizabeth Martyn, Interim City Attorney

**EXHIBIT A**

**Boundary Map for Community Facilities  
District No. 07-1 (Newport/I-215 Interchange)**

**[See Attached Page]**

# BOUNDARIES - POTENTIAL ANNEXATION AREA

## COMMUNITY FACILITIES DISTRICT NO. 07-1 (NEWPORT / I-215 INTERCHANGE) OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING POTENTIAL ANNEXATION AREA OF COMMUNITY FACILITIES DISTRICT NO. 07-1 (NEWPORT / I-215 INTERCHANGE) OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, WAS APPROVED BY THE RIVERSIDE COUNTY BOARD OF SUPERVISORS AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007, BY ITS RESOLUTION NO. \_\_\_\_\_, 2007.

CLERK OF THE BOARD OF SUPERVISORS  
 FILED IN THE OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

CLERK OF THE BOARD OF SUPERVISORS

RECORDED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007 AT THE HOUR OF \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ PAGE(S) \_\_\_\_\_ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, IN THE OFFICE OF THE COUNTY RECORDER, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

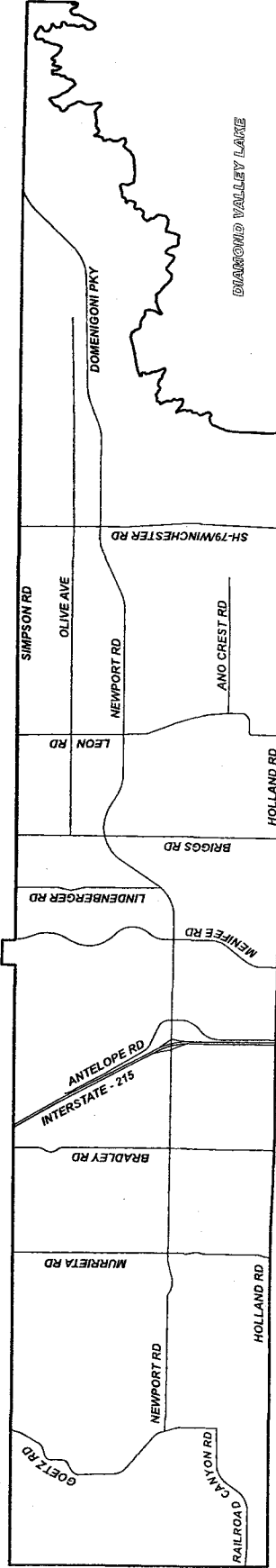
FEE: \_\_\_\_\_ NO.: \_\_\_\_\_  
 LARRY W. WARD, RIVERSIDE COUNTY ASSESSOR-CLERK-RECORDER

BY: \_\_\_\_\_ DEPUTY

LEGEND  
 \_\_\_\_\_ POTENTIAL ANNEXATION AREA

PERRIS

HEMET



LAKE EL SINORE

BOC TERMEJETA



NOT TO SCALE

ALBERT A. WEBB  
 A.S. & A.S. ENGINEERS  
 ENGINEERING CONSULTANTS  
 THIS BOUNDARY MAP CORRECTLY SHOWS THE BOUNDARIES OF THE POTENTIAL ANNEXATION AREA. FOR DETAILS CONCERNING THE LINES AND DIMENSIONS OF LOTS OR PARCELS REFER TO THE COUNTY ASSESSOR'S MAPS FOR FISCAL YEAR 2007-2008.

**EXHIBIT B**

**Boundary Map for Zones B, C, D and E of the Menifee Valley Road and Bridge  
Benefit District**

**[See Attached Page]**

Riverside County Transportation Department  
**MENIFEE VALLEY**  
 Road & Bridge Benefit District

