

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

645  
A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
April 19, 2012

**SUBJECT:** Approval of 1) Memorandum of Understanding (MOU) and 2) Second Amendment to the License and Indemnity Agreement between the City of La Quinta (CITY) and the County of Riverside (COUNTY) regarding the potential widening of Fred Waring Drive between Adams Street and Port Maria Road.

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Memorandum of Understanding between the CITY and the COUNTY regarding the potential widening of Fred Waring Drive between Adams Street and Port Maria Road, and;
2. Approve the Second Amendment to the License and Indemnity Agreement, and;

\_\_\_\_\_  
Juan C. Perez  
Director of Transportation

JCP:sw  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/2012

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

**C.E.O. RECOMMENDATION:** **APPROVE**  
  
BY:   
Tina Grande  
**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
DATE: 4-19-12  
BY: SYNTHIA M. GUNZEL  
Departmental Concurrence

Dept Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.** 6/03/08, 3.75 | **District:** 4/4 | **Agenda Number:**

**3.36**

The Honorable Board of Supervisors

RE: Approval of 1) Memorandum of Understanding (MOU) and 2) Second Amendment to the License and Indemnity Agreement between the City of La Quinta (CITY) and the County of Riverside (COUNTY) regarding the potential widening of Fred Waring Drive between Adams Street and Port Maria Road.

April 12, 2012

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3. Authorize the Chairman to execute both, and;
4. Authorize the Director of Transportation to take all necessary actions to administer and implement the agreement and the MOU.

**BACKGROUND:** The Transportation Department has been working with the City of La Quinta for approximately two years on the appropriate scope of work necessary to widen Fred Waring Drive between Adams Street and Port Maria Road to six lanes. Fred Waring is one of the identified regional arterials to be improved in the original Measure "A" and identified in CVAG's Regional Arterial Program.

In June 2008, the COUNTY and CITY entered into a License and Indemnity Agreement which allowed the COUNTY to re-stripe Fred Waring to four lanes (two in each direction) while the six lane concept was being developed. The Transportation Department has been heavily involved in a series of numerous meetings with CITY staff, the County residents on the north side of Fred Waring, and the City residents on the south side (including the La Quinta Palms community) to discuss several concerns and technical challenges. The present concept which has been crafted with this input in mind provides for six lanes of widening while still keeping 26 existing homes on the north side (which would have required relocation under other scenarios), provides for minor widening (about 5 feet) to be done on the southern CITY side, will install a soundwall for the homes on the southerly side, and elevates the road to continue to allow left turns into and out of the La Quinta Palms community. A transition and on street parking lane will be provided on the north side to allow for safe turning into and out of the driveways.

This alternative results in a very substantial reduction in costs and impacts versus the alternative to purchase and relocate dozens of homes on the north side (roughly \$10 million for this preferred alternative versus \$24 million). This will allow CVAG (which funds 75% of regional arterial projects) and the COUNTY to use this cost savings to help deliver other critical projects to improve mobility and traffic safety within the Coachella Valley.

Due to the substantial savings to the COUNTY being realized through this preferred alternative, the Transportation Department has indicated our willingness in this MOU to pay the full 25% local share of this project, including the lesser costs to widen a few feet on the CITY side (southerly). Since this preferred alternative allows the driveways on the north side to remain onto a six lane road, which is not typical, the CITY has requested that there be an indemnification from the COUNTY on any design issues.

This MOU identifies a preferred alternative that both parties (and CVAG) have agreed to endorse. We note that the CEQA process needs to be completed and final decisions on adoption of a specific alternative or on approval of any project will not be formalized until that concludes.

The MOU is also in the process of being approved by CVAG.

Our goal is to complete the environmental and final design work within a year and have this project out to construction by Spring 2013.

## SECOND AMENDMENT TO LICENSE AND INDEMNITY AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AND INDEMNITY AGREEMENT ("Amendment"), is made, to be effective the 3/7 day of, 2012, by and between the CITY OF LA QUINTA, a California charter city ("City"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"), with reference to the following:

### Recitals

WHEREAS, the City and the County have entered into that certain License and Indemnity Agreement, dated June 3, 2008, ("Original License") pursuant to which City granted a temporary, conditional license to the County to permit the temporary encroachment along Fred Waring, between Adams Street and Port Maria Road, to install interim roadway improvements ("Interim Improvements") and County has accepted the license and agreed to indemnify the City for these Interim Improvements, as more particularly described in the License and Indemnity Agreement; and

WHEREAS, the City and the County have entered into that First Amendment to License and Indemnity Agreement, dated November 2, 2010, ("First Amendment")

WHEREAS, the First Amendment expired six (6) months after the date that the agreement had been executed by all parties; and

WHEREAS, the Original License together with both Amendments are collectively referred to herein as the "License"; and

WHEREAS, since the City and the County have been negotiating and are entering into that certain Memorandum of Understanding to address each party's roles and responsibilities relating to alternate design choices, CEQA consideration and a final agreement for permanent roadway improvements. if the road improvement project is ultimately approved, an extension for the term of the License is warranted; and

WHEREAS, the City and the County now desire to extend the term of the License.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Term of License. Section 2 of the License is hereby amended by the following:  
"The term of the License shall be extended to December 31, 2012."
2. Except as modified or supplemented by this Second Amendment to License, all provisions of this License shall remain in full force and effect.
3. This Second Amendment to License shall not be binding or consummated until its approval by the Board of Supervisors of Riverside County and the City Council of La Quinta.

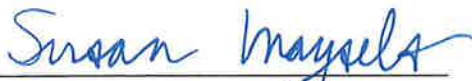
IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above,

CITY OF LA QUINTA,  
a California charter city



By: Mark Weiss  
Interim City Manager

ATTEST:



Susan Maysels, Interim City Clerk

APPROVED AS TO FORM:



M. Katherine Jenson, City Attorney

COUNTY OF RIVERSIDE, a political subdivision  
of the State of California

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

ATTEST:  
Clerk of the Board  
Kecia Harper-Thein

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
Pamela J Walls, County Counsel



Synthia M, Gunzel, Deputy County Counsel

MEMORANDUM OF UNDERSTANDING

REGARDING THE POTENTIAL WIDENING OF FRED WARING DRIVE BETWEEN  
ADAMS STREET AND PORT MARIA ROAD

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated \_\_\_\_\_, 2012, by and between the CITY OF LA QUINTA, a California charter city ("City"), the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County") and the Coachella Valley Association of Governments, a California joint powers agency, ("CVAG"), is made with reference to the following recitals and terms.

R E C I T A L S

WHEREAS, this MOU relates to proposed improvements to that certain portion of a public street commonly known as Fred Waring Drive, between Adams Street and Port Maria Road, a length of approximately 3300 feet ("Project Site"). A depiction of the Project Site is attached hereto as Exhibit "A" and incorporated herein by this reference. The north side of Fred Waring Drive in the Project Site falls under the jurisdiction of the County, while the south side is under the City's jurisdiction. The centerline of the existing roadway is generally located on the boundary line between the City and the County. The entire road width of Fred Waring Drive west of Adams Street and east of Port Maria Road falls under the City's jurisdiction; and

WHEREAS, on November 8, 1988 Voters located within the Jurisdictional boundaries of the County of Riverside approved Measure A authorizing the imposition of a half-cent sales tax for Transportation purposes; and

WHEREAS, the widening of Fred Waring Drive was a Named Measure A Regional Artrial Project; and

WHEREAS, The Coachella Valley Transportation Project Prioritization Study lists the portion of roadway along Fred Waring Drive identified as eligible for funding from the "Measure A" and "Transportation Uniform Mitigation Fee" programs; and

WHEREAS, on March 3, 2008, the Coachella Valley Association of Governments ("CVAG") entered an agreement titled "Agency Reimbursement Agreement by and between CVAG and the COUNTY of Riverside" authorizing the expenditure of funds for improvements to this segment of roadway; and

WHEREAS, on March 18, 2008, the City Council of the City approved the concept of widening Fred Waring Drive, between Washington Street and Jefferson Street, to accommodate six (6) lanes of traffic ("Project"); and

WHEREAS, on April 15, 2008, the County approached the City to discuss interim improvements and alternatives for the widening of Fred Waring Drive between Adams Street and Port Maria Road. County presented three alternatives for the widening; and

WHEREAS, the City has sufficient width in its portion to accommodate the three lanes of travel; and

WHEREAS, the County requested that the City agree to move the centerline of the roadway to the south in order to accomplish the road widening project; and

WHEREAS, on June 30, 2008, the City and the County entered into that certain License and Indemnity Agreement that provided terms and conditions for the installation of certain temporary roadway modifications in portions of the Project Site (Temporary License and Indemnity Agreement); and

WHEREAS, on November 2, 2010, the City and the County executed an amendment titled "First Amendment to License and Indemnity agreement" that extended the term of the License and Indemnity Agreement for an additional six (6) months from the date the Original License was due to expire; and

WHEREAS, the County has requested the City select a design for the permanent improvements to serve as the "preferred alternative" to be studied for purposes of complying the California Environmental Quality Act ("CEQA"); and

WHEREAS, the design the County has proposed as the preferred alternative includes the centerline moving to the south and has been identified in presentations to the La Quinta City Council as "Alternative No. 1"; and

WHEREAS, the City of La Quinta is willing to select Alternative No. 1 as the preferred alternative for purposes of the CEQA analysis; and

WHEREAS, Alternative No. 1 provides a significant public benefit in terms of costs savings to the public by choosing an alternative that is fiscally responsible in these extreme economic conditions; and

WHEREAS, if Alternative No. 1 is ultimately chosen for the Project Site, it would be deemed the "Project" and the City and the County will need to enter into a permanent License and Indemnity Agreement to replace the temporary License and Indemnity Agreement entered into by the parties.

WHEREAS, neither the City nor the County will actually approve any design until the CEQA process has been completed.

NOW, THEREFORE, incorporating the foregoing recitals and in consideration thereof, and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by this reference to the same extent as though herein again set forth in full.

2. Preferred Alternative; CEQA Compliance; No Predetermination. For purposes of completing the CEQA review, the parties agree that Alternative No. 1 shall be studied as the preferred alternative. The County shall be the lead agency for CEQA and the City shall be a responsible agency subject to the requirements of CEQA Guidelines Section 15096. The approval of this MOU is not a commitment to proceed with the Project. The approval of the Project is contingent on completion of the CEQA review. The scope of analysis conducted for CEQA will include the activities described below in Section 3, paragraphs (a), (b) and (c).

3. Permanent License and Indemnity Agreement. The parties agree that if the Project is approved with Alternative No. 1 as the design, the Project will not be able to proceed until and unless the City and the County enter into a permanent License and Indemnity Agreement ("Permanent License and Indemnity Agreement), since the centerline would be moving south into the City. The Permanent License and Indemnity Agreement shall include all of the following provisions:

(a) In as much as the Project affects existing landscape improvements the County shall be required to install new irrigation, landscaping and landscape lighting on both the north and south sides of the Project Site. The landscaping must be drought tolerant and should include an option for artificial turf within the median(s) on Fred Waring Drive. The landscaping must be based on specifications prepared by the County and approved by the City and the Coachella Valley Water District. The County and City will share in the maintenance cost of the median landscaping and irrigation water equally. County and City street maintenance responsibilities will remain as before the project.

(b) The project will include a rubberized asphalt overlay as a measure to attenuate noise for the local residents. As a result of the Noise Study prepared for the project, the project will also include a sound wall between Adams St and Dune Palms Road to be located on the south side of the road between the roadway and the residential properties. The sound wall is provided to mitigate projected noise levels that would exceed 65 dBA Community Noise Equivalent Level (CNEL). The sound wall height will not exceed eight feet as recommended per the Noise Study. The costs associated with the design and construction of a sound wall are considered valid project cost and eligible for reimbursement by CVAG.

(c) The County shall be required to submit a traffic control plan and roadway improvement plans, which are subject to the approval of the Public Works Director of the City. The traffic control plan will be part of an encroachment permit which may include additional measures to insure the safety of motorists during construction of the project and to cover City inspection costs.

(d) The County shall be responsible for 100% of the design and construction costs for the "Project," Alternative 1 or variation thereof as mutually agreed to. The County shall also be solely responsible for repairing any damaged street or landscape improvements resulting from the Project.

(e) All construction will be dependent on the improvements being eligible under CVAG's policies as outlined in Section IV, "Cost Determination/Expense Eligibility" of CVAG's Policies and Procedures Manual and CVAG agreeing to reimburse 75% of the cost. The remaining 25% cost shall be paid by the County.

(f) Indemnity and Release. The County agrees to defend, indemnify, and hold the City, its officers, officials, representatives, agents and employees (collectively, "Indemnified Parties") harmless from any and all claims, actions, liabilities, or legal proceedings (collectively, "Claims"), arising from any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken by the County under this License and Indemnification Agreement, or which arises out of, relates to, or in any way involves the design, construction, installation, or use of the Improvements, including each and every design feature utilized in the Improvements and the driveway connections to Fred Waring Drive. Upon receipt of any Claim covered by this provision, the Indemnified Parties shall tender the Claim to the County, and the County shall provide the Indemnified Parties' defense in the matter, which includes reasonable attorneys' fees and costs, at no cost to Indemnified Parties. The Indemnified Parties shall fully cooperate in the defense of any such Claim.

The County agrees to promptly pay any and all final judgments or awards of damages, costs, or any other monetary awards against the Indemnified Parties covered by this provision.

This provision also shall not apply to Claims where the cause of injury or damage is determined by a final judgment or ruling, no longer subject to appeal, to be solely the result of City's negligence, willful misconduct or gross misconduct with regard to the maintenance of City roadways or median improvements within City limits. To the extent the City's negligence, willful misconduct or gross misconduct with regard to the maintenance of City roadways or median improvements within City limits is determined by a final judgment or ruling, no longer subject to appeal, to be only one of two or more proximate causes of said injury or damages, the County's defense and indemnity obligations to City shall be reduced on a pro rata basis in accordance with the determinations included in such final judgment or ruling.

The County's obligations under this provision shall commence from the date the construction of the Improvements commences and shall continue in perpetuity.

Upon request by the City, the County either shall add the Indemnified Parties as "additional insureds" to any and all of the County's insurance policies which might relate to the Improvements made to the Project Site or provide proof of self insurance coverage for the Improvements made to the Project Site. However, the County agrees that the providing of said insurance coverage does not relieve the County of the obligations assumed within this provision.

4. Miscellaneous.



(a) Attorneys' Fees. In the event of any dispute between the parties hereto involving this MOU, the prevailing party shall be entitled to recover, and the other party agrees to pay, all reasonable fees, expenses and costs, including but not limited to attorneys' fees.

(b) Notices. Any notice which either party may desire to give to the other party must be in writing and shall be effective (i) when personally delivered by the other party or by messenger or courier; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) one (1) business day after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission (as evidenced by a computer generated receipt confirming a successful transmission), provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

If to City:                   City of La Quinta  
                                  Thomas P. Genovese, City Manager  
                                  78-495 Calle Tampico  
                                  La Quinta, California 92253

With a copy to:           Rutan & Tucker, LLP  
                                  M. Katherine Jenson  
                                  611 Anton Blvd., Suite 1400  
                                  P.O. Box 1950  
                                  Costa Mesa, CA 92628-1950

If to County:               Riverside County Transportation Department  
                                  Juan C. Perez, Director of Transportation  
                                  4080 Lemon Street  
                                  Riverside, CA 92501

With a Copy to :       County of Riverside  
                                  Clerk of the Board  
                                  P.O. Box 1147  
                                  Riverside, CA 92502-1147

If to CVAG:               Coachella Valley Association of Governments  
                                  Tom Kirk, Executive Director  
                                  73-710 Fred Waring Drive, Suite #200  
                                  Palm Desert, CA 92260

Either party may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified, and/or specify additional parties to be notified.

5. Successors and Assigns. This MOU shall be binding on the parties hereto and their respective successors.
6. No Third Parties Benefited. This MOU is made for the sole benefit and protection of the City and County, and their respective successors. No other person shall have any right of action or right to rely thereon.
7. Entire Agreement. This MOU contains the entire agreement of the parties hereto with respect to the matters covered hereby, and all negotiations and agreements, statements or promises between the parties hereto or their agents with respect to this transaction are merged in this MOU, which alone expresses the parties' rights and obligations and if not contained herein shall not be binding or valid against either of the parties hereto. Notwithstanding the prior sentence, the Temporary License and Indemnification Agreement shall remain in force and effect unless terminated pursuant to its terms or superseded by the Permanent License and Indemnity Agreement.
8. Modification. Any amendments or modifications to this MOU must be in writing and executed by all the parties to this MOU.
9. Interpretation; Governing Law. This MOU shall be construed according to its fair meaning and as if prepared by both parties hereto. This MOU shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this MOU. Titles and captions are for convenience only and shall not constitute a portion of this MOU. As used in this MOU, masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
10. No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this MOU shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions thereof.
11. Severability. If any term, provision, condition or covenant of this MOU or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
12. Counterparts. This MOU may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this MOU to each other by facsimile, which facsimile signatures shall be binding. Any facsimile delivery of signatures shall be followed by the delivery of executed originals.

**SIGNATURE PAGES FOLLOW**

City

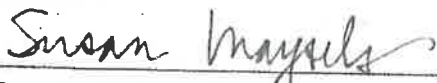
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date set forth above.

CITY OF LA QUINTA,  
a California charter city



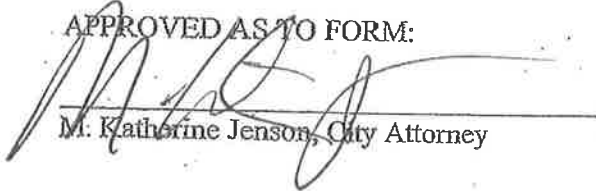
By: Mark Weiss  
Interim City Manager

ATTEST:



Susan Maysels, Interim City Clerk

APPROVED AS TO FORM:



M. Katherine Jenson, City Attorney

COUNTY OF RIVERSIDE, a political subdivision of the  
State of California

By: \_\_\_\_\_

John Tavaglione, Chairman  
Board of Supervisors

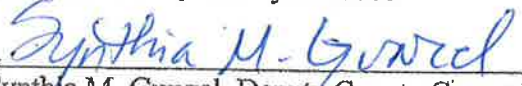
ATTEST:

Clerk of the Board  
Kecia Harper-Ithem

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

Pamela J Walls, County Counsel



Synthia M. Gunzel, Deputy County Counsel

COACHELLA VALLEY ASSOCIATION OF  
GOVERNMENTS, a California joint powers agency

By : \_\_\_\_\_

John J. Benoit, Chairperson  
CVAG Executive Committee

ATTEST:

\_\_\_\_\_  
Tom Kirk, Executive Director

EXHIBIT "A" to MEMORANDUM OF UNDERSTANDING (improvements to Fred Waring Drive- Adams St to Port Maria Rd)



- LEGEND**
- EXISTING RIGHT OF WAY
  - PROPOSED STAMPED CONCRETE
  - PROPOSED EDGE OF PAVEMENT
  - NEW CONCRETE PAVERS
  - COLDMILL/OVERLAY
  - NEW CURB AND GUTTER
  - NEW SIDEWALK
  - NEW RAISED MEDIAN
  - NEW FULL DEPTH AC AND BASE



**AECOM**  
 SOI VIA PREMIERE  
 OMAHA, NE 68102

COUNTY OF RIVERSIDE / CITY OF LA QUINTA  
 FRED WARING DRIVE  
 IMPROVEMENT PROJECT  
 ALTERNATIVE 1 - LAYOUT