

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

961C



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
May 23, 2012

SUBJECT: Cooperative Agreement between the County of Riverside (County) and Riverside Mitland 03 LLC (Developer) for Roadway Improvements on Briggs Road and Baxter Road

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Cooperative Agreement with Riverside Mitland 03 LLC for roadway improvements on Briggs Road and Baxter Road; and
2. Authorize the Chairman of the Board to execute the same.

BACKGROUND: The County is the lead agency for the proposed Project, which includes construction of half-street improvements on Briggs Road along the northern frontage of Dorothy McElhinney Middle School and Lisa J. Mails Elementary School. Also, a half-width section of

Patricia Romo

Juan C. Perez
Director of Transportation

Patricia Romo
Deputy Director of Transportation

JCP:gh
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 221,999	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

SOURCE OF FUNDS: Developer Funds (100%) There are no General Funds used in this project.	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*
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MARSHA L. VICTOR
DATE: 5/24/12
Departmental Concurrence

Dept't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.

District: 3/3

Agenda Number:

The Honorable Board of Supervisors

RE: Cooperative Agreement between the County of Riverside (County) and Riverside Mitland
03 LLC (Developer) for Roadway Improvements on Briggs Road and Baxter Road

May 23, 2012

Page 2 of 2

Baxter Road would be paved between the intersection with Briggs Road and the join with existing pavement just to the east. The proposed paving and street appurtenances will accommodate one through lane in each direction and a left turn lane at the intersection of Briggs and Baxter at the school. The proposed construction also includes water and sewer improvements associated with Dorothy McElhinney Middle School and Lisa J. Mails Elementary School and a storm drain system as it relates to the half street improvements.

The Developer desires the County to include additional work to be done with the County's Project by adding an alternate bid item for the extra work to the Project's construction bid package. The alternate bid item work includes constructing an 8" sewer line in Baxter Road that will connect with the proposed sewer in Briggs Road and extend easterly along Baxter Road for a length of approximately 985 feet. About 1,000 feet of storm drain pipes would be installed along the north side of Baxter Road. Also, additional pavement on Baxter Road would be included from Briggs Road easterly to the existing pavement for about 1,450 lineal feet. The Developer will fund 100% of this additional work in the amount of \$221,998.60.

The bid opening for this Project was held on May 9, 2012. Construction award and construction start is anticipated for June 2012, when the schools are out of session, which is intended to minimize impacts to school operations and traffic.

Project Number: C2-0156

COOPERATIVE AGREEMENT BY AND BETWEEN

COUNTY OF RIVERSIDE

AND

RIVERSIDE MITLAND 03 LLC

**Contract No. 12-05-006
Riverside Co. Transportation**

For Roadway Improvements on

Briggs Road and Baxter Road

This Cooperative Agreement ("AGREEMENT") entered into this _____ day of _____, 2012, by and between the County of Riverside ("COUNTY"), and Riverside Mitland 03 LLC, a Delaware Limited Liability Company ("DEVELOPER") for the provision of roadway improvements on Briggs Road and Baxter Road. The COUNTY and DEVELOPER are sometimes hereinafter referred to individually as "PARTY" and collectively as the "PARTIES".

RECITALS

- A. The COUNTY is the lead agency to construct half-street improvements on Briggs Road and Baxter Road along the northerly frontage of Dorothy McElhinney Middle School and Lisa J. Mails Elementary School (the "PROJECT").
- B. The DEVELOPER requested the COUNTY to include additional work to be done with the PROJECT by adding an alternate bid item for the extra work to the PROJECT's construction bid package, as further described in Exhibit "A" under Scope of Work (the "WORK").
- C. The County opened bids for the PROJECT, including the alternate bid item for the WORK, on May 9, 2012.
- D. The DEVELOPER desires to fund the WORK as defined herein.
- E. The purpose of this AGREEMENT is to memorialize the mutual understandings by and between the PARTIES under which the WORK is to be administered, coordinated, constructed, managed, and funded.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the PARTIES hereby agree as follows:

SECTION 1 • DEVELOPER AGREES:

- 1. Developer provided COUNTY a written acceptance of the bid and approval to move forward with the WORK on May 17, 2012.

- 1 2. To fund the cost of the WORK in the bid amount of \$221,998.60.
- 2 3. To deposit with COUNTY, an amount equal to one-half of the accepted bid (the "Deposit") within 7 calendar
- 3 days from the award date. The remaining amount shall be due 30 calendar days after award date.
- 4 4. To grant permission to COUNTY to enter DEVELOPER's property to perform grading and other PROJECT
- 5 and WORK related activities.
- 6 5. To provide a representative to coordinate with the COUNTY's Resident Engineer during the construction of
- 7 the WORK.

8 **SECTION 2 • COUNTY AGREES:**

- 9 1. To serve as the lead agency for the WORK and comply with applicable requirements under the California
- 10 Environmental Quality Act ("CEQA").
- 11 2. To advertise, award and administer a public works contract for the construction of the WORK in conjunction
- 12 with the PROJECT in accordance with local agency Public Works Bidding Requirements, Public Contract
- 13 Codes and California Labor Codes.
- 14 3. To furnish a representative to perform the function of Resident Engineer during construction of the WORK.
- 15 The Resident Engineer shall be a Licensed Civil Engineer. The Resident Engineer shall also be independent
- 16 of the construction contractor.
- 17 4. To furnish qualified support staff to assist the Resident Engineer in, but not limited to, construction surveys,
- 18 soils and foundation tests, measurement and computation of quantities, testing of construction materials,
- 19 checking shop drawings, preparation of estimates and reports, preparation of as-built drawings, and other
- 20 inspection and staff services necessary to assure that the construction is performed in accordance with the
- 21 approved PS&E documents.

22 **SECTION 3 • IT IS MUTUALLY AGREED AS FOLLOWS:**

- 23 1. The approved bid for the construction cost of the WORK is \$221,998.60. This amount does not include the
- 24 COUNTY's contract administration expenses for the WORK.
- 25 2. COUNTY shall not be obligated to award a contract to construct the WORK until after receipt of
- 26 DEVELOPER's acceptance of the bid for the WORK and Deposit as provided for in Section 1 herein.
- 27 3. The COUNTY's basis for determination of the low responsive bid is the lowest responsive and responsible bid
- 28 for the sum of all bid schedules, including alternative bid schedules.
- 29 4. If the COUNTY does not receive the DEVELOPER's Deposit as provided herein, this AGREEMENT shall be

1 deemed to be terminated by mutual consent.

2 5. The PARTIES agree that should unforeseen circumstances arise during construction which result in
3 necessary additional work related to the WORK, the DEVELOPER shall fund said additional work, including
4 COUNTY's contract administration expenses for the extra work.

5 6. Change orders involving the WORK will not be implemented by the COUNTY without DEVELOPER's prior
6 written approval. However, DEVELOPER agrees that COUNTY'S Engineer may order additional work, in
7 advance of receipt of written authorization from DEVELOPER, if the COUNTY'S Engineer determines that
8 additional work is urgently needed for the protection of life or property or to avoid loss of productivity that is
9 likely to result in a right-of-way delay claim to either COUNTY or DEVELOPER. COUNTY shall endeavor to
10 obtain verbal approval from DEVELOPER prior to ordering such urgently needed additional work.

11 7. Portions of the work completed under the DEVEOLPER's alternate bid item may be eligible for TUMF credits
12 in the future, subject to verification with the TUMF program rules and provided the DEVELOPER completes
13 the ultimate road improvements, which provides for an increase in the number of through traffic lanes; and
14 Western Riverside Council of Governments (WRCOG) approves of such eligibility.

15 8. COUNTY shall cause COUNTY's contractor to maintain in force, until completion and acceptance of the
16 PROJECT construction contract, a policy of Contractual Liability Insurance, including coverage of Bodily
17 Injury Liability and Property Damage Liability, in the amount of \$2,000,000 minimum single limit coverage,
18 and a policy of Automobile Liability Insurance in the amount of \$1,000,000 minimum. Endorsements to each
19 policy shall be required which name the DEVELOPER, COUNTY, its officers, elected officials, employees,
20 and agents as additionally insured. COUNTY shall also require COUNTY's contractor to maintain Worker's
21 Compensation Insurance.

22 9. The PARTIES shall retain or cause to be retained for audit for a period of three (3) years from the date of final
23 payment, all records and accounts relating to the WORK.

24 10. Each of the PARTIES, hereby agree to indemnify, defend, save and hold harmless the other PARTY and their
25 respective officers, employees, agents or representatives, of and from any liabilities, claims, demands, suits,
26 action and cause of action arising out of or in any manner connected with any act or omission of such
27 indemnifying party, arising or alleged to arise in connection with such party's duties and obligations
28 hereunder.

29 11. If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or

1 unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or
2 invalidated in any way.

3 12. This AGREEMENT and the exhibits herein contain the entire AGREEMENT between the PARTIES, and are
4 intended by the PARTIES to completely state the AGREEMENT in full. Upon completion of this
5 AGREEMENT, both PARTIES have no further obligations to each other. Any agreement or representation
6 respecting the matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in
7 this AGREEMENT, is null and void.

8 13. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed
9 by all PARTIES.

10 14. Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third
11 parties not party to this AGREEMENT or affect the legal liability of the PARTIES to this AGREEMENT by
12 imposing any standard of care with respect to the maintenance of roads different from the standard of care
13 imposed by law.

14 15. None of the PARTIES shall assign this AGREEMENT without the written consent of the other party.

15 16. This AGREEMENT may be signed in counterparts, each of which shall constitute an original and which
16 collectively shall constitute one instrument.

17 17. All notices, demands, invoices, and other communications required or permitted hereunder shall be in writing
18 and delivered to the following addresses or such other address as the PARTIES may designate:

19 To COUNTY: Riverside County Transportation Department
20 Attention: Juan C. Pérez, Director of Transportation
21 4080 Lemon Street, 8th Floor, Riverside, CA 92501
22 Phone: (951) 955-6740
23 Fax: (951) 955-3198

24 To DEVELOPER: Riverside Mitland 03 LLC
25 3090 Bristol St., Suite 220, Costa Mesa, CA 92626
26 Attention: Dennis Chapman, Vice President
27 Phone: 714-200-1604
28 Fax: 714-200-1874

29 **[Signatures of Parties on Following Page]**

APPROVALS

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

_____ Dated: _____

Juan C. Perez

Director of Transportation

APPROVED AS TO FORM:

Pamela J. Walls Dated: 5/24/12

Pamela J. Walls

County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS:

_____ Dated: _____

Chairman, County Board of Supervisors

ATTEST:

Kecia Harper-Ihem

Clerk of the Board

_____ Dated: _____

Deputy

RIVERSIDE MITLAND 03 LLC

APPROVED BY:

_____ Dated: _____

Name

Title

APPROVED AS TO FORM:

_____ Dated: _____

Name

Title

Briggs Road and Baxter Road

APPROVALS

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

_____ Dated: _____

Juan C. Perez

Director of Transportation

APPROVED AS TO FORM:

_____ Dated: _____

Pamela J. Walls

County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS:

_____ Dated: _____

Chairman, County Board of Supervisors

ATTEST:


Kecia Harper-Ihem

Clerk of the Board

_____ Dated: _____

Deputy

~~BROOKFIELD RESIDENTIAL~~
RIVERSIDE MIDLAND 03 LLC
APPROVED BY: A DELAWARE LIMITED LIABILITY COMPANY

 Dated: 5/23/12

Name Dennis J Chapman

Title Vice President

APPROVED AS TO FORM:

_____ Dated: _____

Name

Title

CERTIFIED TRUE COPY OF CORPORATE RESOLUTION
(Riverside Mitland 03 LLC)

ELECTION OF OFFICERS

RESOLVED, that the following persons are duly elected to serve as the officers of the Company by the Board of Managers or until the election and qualification of their respective successors or their earlier resignation or removal:

RICHARD T. WHITNEY	President
CRAIG J. LAURIE	Chief Financial Officer
DENNIS J. CHAPMAN	Vice President
WILLIAM B. SEITH	Secretary
R. CASEY SCHNOOR	Assistant Secretary

RESOLVED FURTHER, that the Acceptance of each Officer is attached hereto as EXHIBIT "A".

RESOLVED FURTHER, that except when otherwise authorized or directed by the Board of Managers, or by law, the officers of the Company are authorized to execute, acknowledge and deliver any and all instruments of writing, including but not limited to, subdivision maps, contracts, agreements for purchase and sale, leases, deeds, notes, security instruments and such other documentation necessary or appropriate in the ordinary course of business of the Company. Unless specifically authorized by the Board of Managers to the contrary, any and all subdivision maps, contracts, agreements for purchase and sale, leases, deeds, notes, loan agreements, partnership agreements and security instruments, other than contracts involving amounts of less than \$100,000 and deeds for the sale of a single family residence, shall require the signature of two officers of the Company.

RESOLVED FURTHER, that no contract or obligation involving the transfer of a substantial right in any major asset of the Company shall be signed without prior approval of the Board of Managers or any committee thereof duly authorized to give such approval.

This is to certify that the foregoing is a true copy of a resolution adopted by the Board of Managers of Riverside Mitland 03 LLC, a Delaware limited liability company, on the 15th day of March, 2010, and that such resolution is still in full force and effect unamended.

In witness whereof, I have hereunto signed my name as Assistant Secretary of Riverside Mitland 03 LLC, this 30th day of November, 2010.

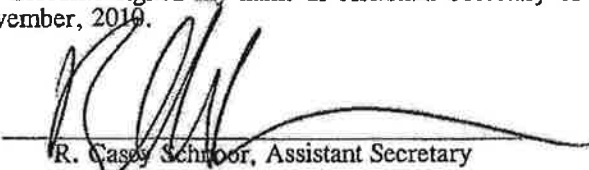

R. Casey Schnoor, Assistant Secretary

EXHIBIT A • PROJECT DESCRIPTION

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Background:

The Murrieta Valley School District and COUNTY are planning to construct half-street improvements on Briggs Road along the northern frontage of Dorothy McElhinney Middle School and Lisa J. Mails Elementary School. Also, a half-width section of Baxter Road would be paved between the intersection with Briggs Road and the join with existing pavement just to the east. The proposed paving and street appurtenances will accommodate one through lane in each direction and a left turn lane at the intersection of Briggs and Baxter at the school. The proposed construction also includes water and sewer associated with Dorothy McElhinney Middle School and Lisa J. Mails Elementary School and the storm drain systems as they relate to the half street improvements (the "PROJECT").

Scope of Work:

The DEVELOPER desires the COUNTY to include additional work to be done with the PROJECT by adding an alternate bid item for the extra work to the PROJECT's construction bid package. The alternate bid item work includes constructing an 8" sewer line in Baxter Road that will connect with the sewer in Briggs Road, which is a part of the PROJECT improvements, and extend easterly along Baxter Road for a length of approximately 985 feet. About 1000 feet of storm drain would be constructed, including 18", 24" and 36" pipe located on the north side of Baxter Road to include bulk heads until future connections. Also, additional pavement on Baxter Road would be included from Briggs Road easterly to the existing pavement for about 1,450 lineal feet (the "WORK").