

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

907
A



FROM: County Counsel

SUBMITTAL DATE:
November 28, 2012

SUBJECT: Agreement with Developer to Acquire Real Property and Construct Off-Site Improvements in Connection with the Approval of Tract Map 30972

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Agreement for Acquisition of Real Property Interests Sufficient to Construct Off-Site Improvements in connection with approval of Tract Map 30972 and
2. Authorize the Chairman of the Board to execute this agreement on behalf of the County.

BACKGROUND: Conditions on Tract Map No.30972, require acquisition of permanent easements for road purposes and temporary construction easements on the east side of Emperor Road, south of McLaughlin Road in the unincorporated county area of Homeland. Stone Star Riverside, LLC ("Developer") has been unable to reach an agreement for purchase of the necessary right-of-way and temporary easements and is asking the County to negotiate and use eminent domain proceedings pursuant to the Government Code section 66462.5. Developer will pay all costs, including costs incurred by County staff.

Anna W. Wang, Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 3,000	In Current Year Budget:	
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

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

C.E.O. RECOMMENDATION:

APPROVE
BY: Denise C. Harden
Denise C. Harden

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

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

Prev. Agn. Ref.: N/A | **District:** 3/3 | **Agenda Number:**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.11

Departmental Concurrence

**AGREEMENT FOR ACQUISITION OF REAL PROPERTY INTERESTS SUFFICIENT
TO CONSTRUCT OFFSITE IMPROVEMENTS**

This Agreement is made and entered into by and between the County of Riverside (“County”), and STONE STAR RIVERSIDE, LLC (“Developer”).

WHEREAS, Developer has requested the approval by County of the project for that certain land division known as Tract Map 30972; and,

WHEREAS, it is a condition of approval of the Tract Map that Developer shall construct or install certain offsite improvements, which improvements have not been constructed or installed as of the date of this Agreement; and,

WHEREAS, Government Code section 66462.5 provides that County may negotiate or commence eminent domain proceedings for the benefit of Developer to acquire an interest in the land sufficient to permit the offsite improvements to be made, and to require the Developer to pay the cost, including attorneys’ fees, incurred in acquiring the offsite interests required; and,

WHEREAS, Developer is desirous of County acquiring for Developer those interests required in connection with the Offsite Improvements for this land division and is obligated to pay the cost, including attorneys’ fees, incurred in acquiring sufficient title or interest.

NOW, THEREFORE, the parties hereto and each of them agree as follows:

1. Developer advises County that the type and extent of the title or interest to be acquired by County for Developer, which title or interest will be sufficient to permit Developer to construct or install the offsite improvements required as a condition of approval of the land division, is as described in the Exhibits attached hereto and incorporated herein as though set forth in full.

2. At a mutually agreed upon time, prior to the requirements established in Section 3, *et seq.* of this Agreement, Developer shall:

- a. Secure an appraisal in a form satisfactory to County of the fair market value of the title or interest to be acquired. If the appraisal is not satisfactory, County will mail notice return receipt required of its dissatisfaction within seven (7) days of receipt of the appraisal by the Office of the County Counsel.
- b. Submit a written offer to the owner of the title or interest to be acquired of a sum not less than the appraised fair market value of the title or interest to be acquired.

- c. Deliver to the County the original and two (2) copies of the appraisal and two (2) copies of the written offer as provided in this paragraph.
3. At a mutually agreed upon time after the filing of the final map, as that term is defined by Government Code section 66457, funds shall be made available from Developer to:
 - a. Deposit with the County a sum equal to one hundred fifty percent (150%) of the amount stated in the appraisal.
 - b. Deposit with the County the sum of \$10,000.00 towards any and all costs incurred by County including, but not limited to, Right of Way agent fees, attorneys' fees and expert fees, as a result of County's negotiating to acquire or commencing an action pursuant to Title VII, Part III of the Code of Civil Procedure, commencing at Section 1230.010, to acquire the title or interest. There shall be maintained a balance in this account of not less than \$10,000.00 at all times.
4. Developer shall be obligated and shall pay for the title or interest acquired at no cost to the County.
5. Developer shall pay any and all amounts necessarily incurred by County to acquire sufficient title or interest. Such amounts shall include, but shall not be limited to, the following:
 - a. All attorneys' fees and expert witness fees and all other costs incurred by County in any action commenced pursuant to Title VII, Part III of the Code of Civil Procedure (Section 1230.010, *et seq.*).
 - b. All attorneys' fees and expert witness fees incurred by County in negotiating to acquire any title or interest.
 - c. Any and all judgment entered pursuant to any to any action commenced pursuant to Title VII, Part III of the Code of Civil Procedure (Section 1230.010, *et seq.*).
6. County may withdraw from the amount deposited under Paragraph 3(a) of this Agreement, any and all sums necessary to acquire that title or interest described in the Exhibits attached hereto. Withdrawal from this account shall be at the absolute discretion of the County and without recourse by Developer; provided, however, that any settlement over one hundred ten percent (110%) of the appraisal shall require the consent of Developer, which shall not be

unreasonably withheld. Any and all amounts remaining in this account after the title or interest as described in the attached Exhibits have been acquired shall be returned to Developer within a reasonable period of time.

7. County may withdraw from the amount deposited under Paragraph 3(b) of this Agreement any and all costs incurred by County in acquiring or attempting to acquire that title or interest as described in the Exhibits attached hereto. Costs shall not include any sums paid pursuant to Paragraphs 4 and 5(c) for the acquisition of property.

8. In the event County does not, within the time period set forth in Government Code section 66462.5 acquire by negotiation or commence proceedings pursuant to Title VII, Part III of the Code of Civil Procedure (Section 1230.010, *et seq.*) to acquire that title or interests described in the Exhibits attached hereto, Developer hereby expressly waives that part of the statute which states that the condition for construction of offsite improvements will be deemed waived, so long as County has diligently and in good faith made an effort to comply with the time provisions stated herein, and provided that County acquires by negotiation or commences proceedings to acquire title or interest within one hundred and eighty (180) days of the date established in Section 3 of this Agreement. Any such waiver will be considered void and without effect and all provisions of Government Code section 66462.5 will be reinstated at the end of this one hundred and eighty (180) day period should County not meet the obligations under this Agreement.

9. Developer shall indemnify and hold County, its officers, agents, employees, attorneys, and independent contractors free and harmless from any liability whatsoever, based or asserted, upon any act or omission of County, its officers, agents, employees, attorneys, and independent contractors, and Developer, for any property damage or any other type or element of damage, including inverse condemnation, of any kind or nature, relating to or arising from County's securing or attempting to secure that title or interest as described in the Exhibits attached hereto, except for their sole negligence or willful misconduct.

10. It is agreed that counsel for the County – the Office of County Counsel of Riverside County – shall have full control of the conduct of the performance of services herein agreed to be performed by the County, and to designate who shall perform same, free from obstruction or interference by Developer. It is further agreed that if County deems it appropriate, County may assign representation to outside counsel for purposes of litigating this matter, with all costs to be withdrawn from the fund established by Developer, pursuant to Section 3(b) of this Agreement. Developer agrees to fully cooperate with counsel for the County in furthering the purpose of this Agreement.

11. Developer shall not assign or otherwise transfer any of its rights, duties, or obligations under this Agreement to any person or entity unless the transferee has entered into, and the County has accepted, a new Agreement which is in substantially the same form as this Agreement.

12. Developer, its heirs, assigns and successors-in-interest shall be bound by all terms and conditions contained in this Agreement, and all of the parties thereto shall be jointly and severally liable hereunder.

13. This Agreement shall not be changed or modified in any manner except by an instrument in writing executed by the parties.

14. Any notice required or desired to be served by either party upon the other shall be addressed to the respective parties as set forth below or to such other address as from time to time shall be designated by the respective parties:

<u>COUNTY</u>	<u>DEVELOPER</u>
Riverside County Counsel Attn: Anna W. Wang, Deputy County Counsel 3960 Orange St., Suite 500 Riverside, CA 92501	Stone Star Riverside, LLC c/o Gregory P. Lansing 12671 High Bluff Dr., Suite 150 San Diego, CA 92130

15. This Agreement is intended by the parties as a final expression of their understanding with respect to the matters contained herein and is a complete and exclusive statement of the terms and conditions thereof.

16. The Section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties. The Section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all Parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

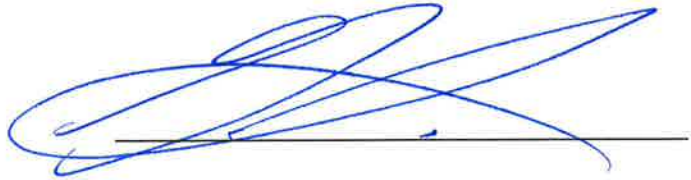
17. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

18. This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original and all, taken together, shall constitute one and the same instrument.

19. This Agreement and any dispute arising hereunder shall be governed by California law. Each party consents to the exclusive jurisdiction of the Superior Court of the County of Riverside, State of California, in any action on a claim arising out of, under, or in connection with this Agreement or the transactions contemplated by this Agreement. Each party hereby acknowledges that the foregoing venue and forum provisions have been chosen as the appropriate and convenient forum for any such action and waives any right to object to jurisdiction on the basis of lack of personal jurisdiction or forum non conveniens. Each party hereby consents to service process via mail or overnight courier to the address specified in Section 14 or by any other method permitted under California law.

DEVELOPER

Dated: 11/6/12



By: GREGORY P. LANSING

Its: MANAGING MEMBER

COUNTY OF RIVERSIDE

Dated: _____

By: _____
Chairman, Board of Supervisors

[SIGNATURES CONTINUED ON NEXT PAGE]

APPROVED AS TO FORM:


COUNTY OF RIVERSIDE
COUNTY COUNSEL

Dated: 11/14/12

By: 
Anna W. Wang
Deputy County Counsel

DEVELOPER'S COUNSEL

Dated: 11/6/12


By: Benjamin M. Weiss
Counsel for Developer

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

(SEAL)