

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

502A



FROM: TLMA – Transportation Department

SUBMITTAL DATE:
February 13, 2014

SUBJECT: Tract 34484 Indemnity Agreement. 4th/4th District. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors approve and execute the attached Indemnity Agreement, which allows Riverside County Transportation Department to release funds being held in an Improvement Plan, account number 060120, to Travelers Casualty and Surety Company of America in the amount of \$95,217.50

BACKGROUND:

Summary

On November 7, 2006 (Item 2-25), pursuant to Government Code Section 66462, the County of Riverside (County), acting through the Board of Supervisors (Board) and Desert Gold Ventures, LLC, entered into Subdivision Improvement Agreements for the construction of streets and the installation of water and sewer systems within Tract 34484. Faithful Performance Bonds with Materials and Labor Bonds were posted by Travelers Casualty and Surety Company of America to guarantee the completion of the improvements within the subdivision.

Patricia Romo

Juan C. Perez
Director of Transportation and Land Management

Patricia Romo
Assistant Director of Transportation

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Developer Based Fees (DBF) Refund - \$95,217.50	Budget Adjustment: N/A
	For Fiscal Year: N/A

C.E.O. RECOMMENDATION: APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY: *Elena M. Boeva* 2-11-14
DATE

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref: 11/7/06, Item 2-25
1/25/11, Item 3-28

District: 4/4

Agenda Number:

3-31

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Tract 34484 Indemnity Agreement. 4th/4th District. [\$0]

DATE: February 13, 2014

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

On January 25, 2011 (Item 3-28), pursuant to Government Code Section 66462, the County, acting through the Board and Transportation Department (Department), approved a Subdivision Improvement Settlement Agreement that allowed Travelers Casualty and Surety Company to complete the necessary bonded subdivision water, monument, and street improvements along Varner Road, between 38th Street and Cook Street and adjacent to Interstate 10 in the Palm Desert area of the County. This work has now been completed.

Travelers Casualty and Surety Company has obtained a judgment against Desert Gold Ventures, LLC and, with this judgment, maintains a right to the remaining funds being held in the Department's Improvement Plan (I.P.) account number 060120. Upon approval of this Form 11, remaining funds that are being held in I.P. account 060120 will be released to Travelers Casualty and Surety Company.

IP060120

Impact on Residents and Businesses

N/A

SUPPLEMENTAL:

Additional Fiscal Information

N/A

INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT (“Agreement”) is made and entered into by and between THE COUNTY OF RIVERSIDE, (the “County”), and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA (“Travelers”) effective on the date this Agreement is approved by the Board of Supervisors for the County of Riverside (“Effective Date”).

I. RECITALS

A. WHEREAS, on or about November 7, 2006, DESERT GOLD VENTURES, LLC (“Developer”), entered into Subdivision Agreements (the “Subdivision Agreements”) with the County to furnish all labor, equipment and materials necessary to perform and complete all offsite road, drainage, and water system improvements and monuments for a certain work of improvement known as Delfino Resorts, consisting of Tract 34484 (“Tract 34484”).

B. WHEREAS, as a condition to proceed with the development of Tract 34484, the County required the Developer to open an Improvement Plan Account, IP 060120 with the County and deposit a certain sum of money from which the County would offset its costs to plan check and inspect the development (the “Inspection Funds”). Presently, the sum of Ninety Five Thousand Two Hundred Seventeen dollars and 50 cents (\$95,217.50) remains on deposit with the County.

C. WHEREAS, on or about December 27, 2006, pursuant to California Government Code Sections 66499 et seq., Travelers issued the following surety bonds for Tract 34484: Performance Bond Nos. 104616168, 104616169 and 104616170 (the “Performance Bonds”) and Payment Bond Nos. 104616168 and 104616169 (the “Payment Bonds”) (collectively, the “Bonds”).

D. WHEREAS, on or about December 23, 2009, as a result of Developer’s defaults under the Subdivision Agreements, the County demanded that Travelers provide a schedule for the completion of the improvements on Tract 34484 or tender the penal amount of the Performance Bonds to the County.

E. WHEREAS, thereafter, Travelers agreed to complete and did complete certain work identified in the Subdivision Agreements.

F. WHEREAS, Travelers obtained a judgment against Developer and others for an amount in excess of \$11,000,000 in the U.S. District Court Case *Travelers Casualty and Surety Company of America v. Desert Gold Ventures, LLC, et al.*, Case No. 09-04224. As a result of this judgment, and also pursuant to Travelers’ rights under the General Agreement of Indemnity that was the subject of that litigation, Travelers maintains a right to all Inspection Funds currently held by the County.

NOW, THEREFORE, based on the exchange of valuable consideration, the receipt and sufficiency of which is acknowledged, and based on the Recitals set forth above which form a part of this Agreement, Travelers and the County agree to the following terms and conditions:

II. TERMS

1. The County is currently holding \$95,217.50 in Inspection Funds for Tract 34484. The County will release this amount to Travelers within fourteen (14) days of the parties' execution of this Agreement.

2. In exchange for the Inspection Funds, Travelers shall indemnify, defend and save harmless the County and its officers, agents, and employees from any and all liability, claims, demands, suits, or causes of action for damages arising out of the County's release of the Inspection Funds to Travelers. Travelers' liability under this Agreement to the County is limited to the amount of the Inspection Funds released to Travelers.

3. Presently and in the future, counsel for Travelers, Watt Tieder Hoffar & Fitzgerald ("WTHF") is representing and may represent parties, including but not limited to Travelers, that are and may be adverse to the County. The County irrevocably waives any conflict of interest that arises out of WTHF's representation of the County on matters arising out of Travelers' indemnity obligations pursuant to this Agreement and WTHF's current or future representation of parties that are or may be adverse to the County.

4. No addition to or alteration of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by both Parties to this Agreement.

5. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement, is intended as a final expression of such Parties' agreement with respect to such terms as are included in this Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Agreement.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts so executed shall constitute one Agreement binding all the Parties hereto. A photocopy or fax reproduction of an original copy of the Agreement shall be of the same binding effect as the original.

WHEREFORE, the parties have executed this Agreement by their authorized representatives.

[SIGNATURES ON THE FOLLOWING PAGE]

DATED: 10/30/13

TRAVELERS CASUALTY AND SURETY COMPANY
OF AMERICA

Patrick Toulouse

By: Mr. Patrick Toulouse
Its: Senior Claims Counsel

DATED: _____

COUNTY OF RIVERSIDE

By: Jeff Stone
Chairman, Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

BY: _____
Deputy