

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



220

FROM: Economic Development Agency/Facilities Management and Transportation Department

SUBMITTAL DATE:
July 24, 2014

SUBJECT: Settlement Agreement for the Magnolia Avenue Grade Separation Project; District 2/District 2; [\$23,000]; Transportation Uniform Mitigation Fee (TUMF) 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Settlement Agreement between the County of Riverside (County) and Inland Mercedes, Inc. (Inland Mercedes), located on a portion of Assessor's Parcel Number 135-170-031;
2. Authorize the Chairman of the Board to execute this agreement on behalf of the County;
3. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions necessary to complete this transaction;

(Continued)

Patricia Romo
Patricia Romo
Assistant Director of Transportation

Robert Field
Robert Field
Assistant County Executive Officer/EDA

Juan C. Perez, Director,
Transportation Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 23,000	\$ 0	\$ 23,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Transportation Uniform Mitigation Fee (TUMF)-100%
Budget Adjustment: No
For Fiscal Year: 2014/15

C.E.O. RECOMMENDATION:

APPROVE

BY: *Rohini Dasika*
Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FISCAL PROCEDURES APPROVED
 PAUL LANGULO, CPA, AUDITOR-CONTROLLER
 BY: *[Signature]* 7/22/14
 Susana Garcia-Bocanegra

FORM APPROVED COUNTY COUNSEL
 DATE: 7/16/14
 BY: ANNA W. WANG
 Departmental Concurrence

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

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

Economic Development Agency/Facilities Management and Transportation Department

FORM 11: Settlement Agreement for the Magnolia Avenue Grade Separation Project; District 2/District 2; [\$23,000]; Transportation Uniform Mitigation Fee (TUMF) 100%

DATE: July 24, 2014

PAGE: 2 of 3

RECOMMENDED MOTION: (Continued)

4. Authorize and allocate the full settlement amount of \$18,000 for the limited use/restriction to the Inland Mercedes business operation;
5. Authorize reimbursement to EDA/FM-Real Estate Division in the amount not to exceed \$3,500 for staff time; and
6. Allocate the sum of \$1,500, which includes reserves for any unforeseen and reasonable increases to limited use/restriction to the Inland Mercedes business operation.

BACKGROUND:

The Riverside County Transportation Department (RCTD) proposes to replace the existing Magnolia Avenue/Burlington Northern Santa Fe (BNSF) at-grade railroad crossing in the community of Home Gardens in order to improve safety and traffic operations by eliminating the conflicts of trains passing through the flow of vehicular traffic (Project).

The Project would construct a new four-lane overhead bridge over the existing BNSF tracks, above the entire BNSF right-of-way. The total length of the improvements would extend from approximately 500 feet west of Lincoln Street to approximately 550 feet east of Buchanan Street. The new bridge would be striped for four lanes of traffic on Magnolia Avenue. The length and clearance of the proposed bridge structure would accommodate the existing skewed railroad crossing, as well as the two existing railroad tracks and two additional future tracks (planned separately from this Project), and would also provide space for frontage roads (proposed as part of the project).

The California Environmental Quality Act (CEQA) environmental determination (Statutory Exemption) Public Resources Code 21080.13 was approved on May 11, 2011, by the Riverside County Transportation Department.

The National Environmental Policy Act (NEPA) environmental determination (Categorical Exclusion) Section 6004: 23 CRF 771.117(d)(3) was approved on May 11, 2011, by District 8 Division of Environmental Planning for the California Department of Transportation.

On September 11, 2012, the Board of Supervisors approved Item 3.21, Resolution No. 2012-104, Notice of Intention to Adopt a Resolution of Necessity Regarding the Magnolia Avenue Grade Separation Project – Home Gardens. On October 16, 2012, the Board of Supervisors approved Item 9.9, Resolution No. 2012-105, Authorizing Resolution of Necessity Regarding the Magnolia Avenue Grade Separation Project – Home Gardens.

The County is currently in litigation with Magnolia Business Park, LLC (RIC 1216520), the fee simple owner of the underlying land and multi-tenant industrial building, located on Assessor's Parcel Number 135-170-031, and part of the Project. Inland Mercedes is a tenant leasing and operating an automotive repair business (which includes two service bays) in one of the units of the industrial building (Tenant). The Project may cause limited or restricted access to one of the two service bays as well as additional expenses to the Tenant (moving vehicles in and around the property, clean-up of dust from cars or other business items, and loss or potential loss of business and goodwill) for a period of up to four weeks.

(Continued)

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

Economic Development Agency/Facilities Management and Transportation Department

FORM 11: Settlement Agreement for the Magnolia Avenue Grade Separation Project; District 2/District 2; [\$23,000]; Transportation Uniform Mitigation Fee (TUMF) 100%

DATE: July 24, 2014

PAGE: 3 of 3

BACKGROUND (Continued):

The Economic Development Agency/Facilities Management (EDA/FM) has negotiated the settlement with the Tenant, for the price of \$18,000. There are costs of \$3,500 associated with this transaction. Staff recommends an additional \$1,500 in reserves for the Tenant’s limited or restricted access to the service bays.

Impact on Residents and Businesses

The Project will improve traffic flow along Magnolia Avenue over the Magnolia Avenue/Burlington Northern Santa Fe (BNSF) at-grade railroad crossing. Congestion and travel times will be reduced, thus, improving the quality of life and enhancing safety for the area residents and business owners.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

SUPPLEMENTAL:

Additional Fiscal Information

The following summarizes the funding necessary for the settlement with Inland Mercedes who leases a unit within the industrial building located on Assessor’s Parcel Number 135-170-031:

Settlement Amount:	\$ 18,000
Reserves for Tenant’s Service Bays:	1,500
Estimated Title and Escrow Charges:	0
Preliminary Title Report	0
County Appraisal	0
EDA/FM Real Property Staff Time	3,500
Total Estimated Costs	\$23,000

All costs associated with this transaction are fully funded by TUMF in the Transportation Department’s budget for FY 2014/15. No net county costs will be incurred as a result of this transaction.

Attachments:

Settlement Agreements (4)

1 PROJECT: MAGNOLIA AVENUE GRADE SEPARATION
2 PROJECT

3 APN: 135-170-031
4

5 **SETTLEMENT AGREEMENT**

6 This Settlement Agreement, ("Agreement"), is made by and between the
7 COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"),
8 and INLAND MERCEDES, INC., ("Tenant"). County and Tenant are sometimes
9 collectively referred to as "Parties."

10 **RECITALS**

11 WHEREAS, County is currently working on a grade separation project located at
12 the at-grade crossing of Magnolia Avenue and Union Pacific Railroad tracks by raising
13 the road to obtain vertical clearance between Magnolia Street and the existing railroad
14 tracks("Project");

15 WHEREAS, the term of the Project from commencement to completion will be
16 eighteen (18) months;

17 WHEREAS, Tenant is an automotive repair business which includes two (2)
18 service bays at the rear of the business. Tenant occupies property owned by VGT
19 Properties, LLC, as to an undivided 36.76% interest and Stanford, LLC as to an
20 undivided 6.20% interest and MCA Magnolia, LLC, as to an undivided 18.18% interest
21 and T & C Development Inc. as to an undivided 42.86% interest, all as tenant in
22 common ("Owner") located at 12490 Magnolia Avenue. Tenant has the right to use
23 and occupy property located at 12490 Magnolia Avenue, #A located in the County of
24 Riverside, State of California, as referenced on and identified as Attachment "1,"
25 attached hereto and made a part hereof ("Larger Parcel"); and is also known as
26 Assessor's Parcel Number: 135-170-031;

27 WHEREAS, the County's construction of the Project would impact the
28 improvements located on the portion of the Property located at 12490 Magnolia

1 Avenue #A, County of Riverside, California ("Property"). It is projected that the Project
2 will affect the Tenant's business operations for a period of up to four (4) weeks. The
3 Project may cause access to Tenant to be limited or restricted during this four (4) week
4 period. There are two service bays that Tenant uses for his business; during the four
5 (4) week period of construction of the Project as it impacts the Property, one service
6 bay may be inaccessible;

7 WHEREAS, Tenant leases and operates a business at 12490 Magnolia Avenue,
8 #A improved on the portion of the Larger Parcel;

9 WHEREAS, County is compensating Tenant for the following impacts by the
10 Project on the Property:

- 11 a. Limitation or restriction of the use of the service bays;
- 12 b. Expenses related to towing or otherwise moving vehicles in and around
13 the Property;
- 14 c. Expenses related to the clean-up of dust and other materials from cars or
15 other business items;
- 16 d. Any and all expenses related to the loss or potential loss of business and
17 goodwill during the four (4) week period herein described.

18 WHEREAS, the Effective Date is the date on which this Agreement is approved
19 and fully executed by County and Tenant as listed on the signature page of this
20 Agreement;

21 NOW, THEREFORE, in consideration of the payment and other obligations set
22 forth below, Parties mutually agree as follows:

23 24 **ARTICLE I. AGREEMENT**

25 1. Recitals. The Parties represent and warrant that the above recitals are
26 true and correct and by this reference are incorporated herein.

27 2. Consideration. Tenant agrees to accept County's payment for its
28 potential business revenue and impacts by the Project as noted in the Recitals, under

1 the terms and conditions set forth in this Agreement. The full consideration consists of
2 payment of six hundred dollars (\$600.00) for each day that construction significantly
3 impacts or restricts Tenant's business, up to a maximum of 30 days, with a maximum
4 payment of eighteen thousand dollars (\$18,000.00). Nothing herein shall be construed
5 as a sale of Tenant or any of its assets.

6 3. Miscellaneous Costs. In the event there are documented unforeseen and
7 reasonable increases to the impacts or restrictions to the Tenant's business, the
8 County will authorize the release of funds to Tenant in an amount not to exceed One
9 Thousand Five Hundred Dollars (\$1,500).

10 4. Tenant's Responsibilities

11 A. Tenant agrees to a release of claims provision as set forth in this
12 Paragraph for a period 30 days commencing from the Effective Date of this Agreement.
13 Tenant expressly waives its rights as described in Paragraphs 4.B and 4.C for claims
14 directly or indirectly related to the Project or its construction that arises between the
15 Effective Date of this Agreement and 30 days thereafter. Tenant retains its rights to
16 bring a claim against the County for any and all claims directly or indirectly related to the
17 Project or its construction that arises solely on or after the 31st day after the Effective
18 Date of this Agreement.

19 B. Effective upon the execution of this Agreement the hereinafter
20 described release of claims provision shall automatically go into force and effect without
21 the need for any further action by the Parties. Except as provided for in this Settlement
22 Agreement and for any bodily injury claims or third party property damage claims
23 (including but not limited to injury, damage or death of any person) that directly or
24 indirectly relate to or arise from the construction of the Project, Tenant releases and
25 discharges the County and all of its departments, officers, directors, officials,
26 employees, agents, successors, assigns, and its independent contractors from any and
27 all claims that directly or indirectly relate to or arise from one or more of the following: 1)
28

1 the Project; 2) the construction of the Project; 3) the Property; and 4) the County's
2 acquisition and use of the Property.

3 C. Tenant hereby agrees and affirms that all consideration tendered or
4 granted by County under this Agreement is accepted as full consideration, and except
5 as provided for in this Settlement Agreement, Tenant shall not seek additional
6 compensation for any kind that directly or indirectly relates to or arises from the 1) the
7 Project; 2) the construction of the Project; 3) the Property; and 4) the County's
8 acquisition and use of the Property.

9 D. Tenant represents and warrants that aside from owners of
10 Property, no other person or entity currently holds an interest in the business located on
11 the Larger Parcel or in the lease of the Larger Parcel. Tenant further represents and
12 warrants that it has not and will not assign, transfer or sublet to any third party or entity
13 any of the rights, claims, causes of action or items to be released, which it is obligated
14 to release as part of this Agreement.

15 ARTICLE II. MISCELLANEOUS

16 1. It is mutually understood and agreed by and between the Parties hereto
17 that the right of possession and use of the Property by County, pursuant to the Project
18 including the right to remove and dispose of improvements, shall commence upon the
19 execution of this Agreement by all parties. The Payment includes, but is not limited to,
20 full payment for such possession and use.

21 2. This Agreement embodies all of the considerations agreed upon between
22 the County and Tenant. This Agreement was obtained without coercion, promises
23 other than those provided herein, or threats of any kind whatsoever by or to either
24 party.

25 3. The performance of this Agreement constitutes the entire consideration
26 for the Project and except as provided for in this Agreement shall relieve the County of
27 all further obligations or claims pertaining to the Project.

28

1 4. This Agreement is made solely for the benefit of the Parties to this
2 Agreement and their respective successors and assigns, and no other person or entity
3 may have or acquired any right by virtue of this Agreement.

4 5. This Agreement shall not be changed, modified, or amended except upon
5 the written consent of the Parties hereto.

6 6. This Agreement is the result of negotiations between the Parties and is
7 intended by the Parties to be a final expression of their understanding with respect to
8 the matters herein contained. This Agreement supersedes any and all other prior
9 agreements and understandings, oral or written, in connection therewith. No provision
10 contained herein shall be construed against the County solely because it prepared this
11 Agreement in its executed form.

12 7. Any action at law or in equity brought by either of the Parties for the
13 purpose of enforcing a right or rights provided for by this Agreement shall be tried in a
14 court of competent jurisdiction in the County of Riverside, State of California, and the
15 Parties hereby waive all provisions of law providing for a change of venue in such
16 proceedings to any other county.

17 8. If there is a dispute between the parties relating to this Agreement, the
18 party prevailing will be entitled to recover all costs and expenses of any subsequent
19 proceedings (including trial, appellate, and arbitration proceedings), including attorney
20 fees incurred therein.

21 9. County and Tenant and their assigns and successors in interest shall be
22 bound by all the terms and conditions contained in this Agreement, and all the Parties
23 thereto shall be jointly and severally liable thereunder.

24 10. This Agreement may be signed in counterpart or duplicate copies, and
25 any signed counterpart or duplicate copy shall be equivalent to a signed original for all
26 purposes.

27

28

[Signatures are on the following page]


1 In Witness Whereof, the Parties have executed this Agreement the day and year
2 last below written.

3
4 Dated: _____

5
6 COUNTY OF RIVERSIDE, a political
7 subdivision of the State of California

Inland Mercedes, Inc.

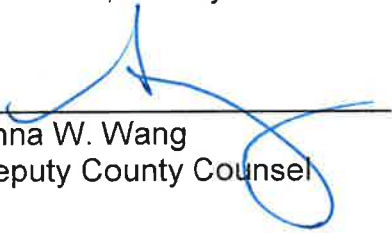
8 By: _____
9 Jeff Stone, Chairman
10 Board of Supervisors

By: 
Name: Kevork Dabbaghian
11 Its: President.

12 ATTEST:
13 Kecia Harper-Ihem
14 Clerk of the Board

15 By: _____
16 Deputy

17
18 APPROVED AS TO FORM:
19 Greg Priamos, County Counsel

20 By: 
21 Anna W. Wang
22 Deputy County Counsel

Attachment 1

Plat Map

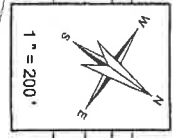
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

OCT 07 2013

SEC. 22, 27 T3S R6W
CITY OF RIVERSIDE, CORONA

TRA 053-001
053-006
053-031
009-011
009-012
009-176

135-17
6-49-1



Legend

- Lot Lines
- Right-of-Way
- Old Lot Lines
- Reference R.O.W.
- Other Elements
- Keen Area
- Subdivision Tie Mark

Date	Old Num	New Num
3/11/05	11	14 ST
2/11/02	3	15, 16
10/11/06	15	17, 18
10/11/06	5, 8, 18	19
6/11/06	19	20, 22
1/11/08	21, 22	23
3/11/08	10	24, 5T
6/11/06	25	25, 26
11/11/08	17	27, 30
3/11/06	4, 25, 26	31
7/11/00	1	32, 5T
5/11/07	7	125, 250, 78
9/11/08	28	32, 5T
9/11/09	27, 33	34
5/11/06	34	35, 37
5/11/03	36	38, 5T
9/11/03	37	39, 5T
9/11/03	12	40, 5T
9/11/03	2	41, 5T

ASSESSOR'S MAP BK138 PG. 17
Riverside County, Calif.



Data

NS1TR #66413 7170

Blk 112	Blk 113	Blk 114	Blk 115
Blk 116	Blk 117	Blk 118	Blk 119
Blk 120	Blk 121	Blk 122	Blk 123

Map Reference

Map 1770 S.B. RIV. LAND & TRIG. CO. LANDS
PM 152/44-46 PARCEL MAP NO. 22624
PM 194/76-78 PARCEL MAP NO. 26908

Sep 2013

