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

FROM: Economic Development Agency and Transportation Department

SUBMITTAL DATE:
December 24, 2009

SUBJECT: Stipulation for Final Judgment in Condemnation for the Clinton Keith Road Extension Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Stipulation for Final Judgment in Condemnation for Assessor's Parcel Number 392-330-015 and authorize the Chairman of the Board to execute this document on behalf of the County;
2. Authorize the undersigned Assistant County Executive Officer/EDA or his designee to execute any other documents and administer all actions to complete this transaction; and

(Continued)

Juan C. Perez, Director
Transportation Department

Robert Field
Assistant County Executive Officer/EDA
by Lisa Brandl, Assistant Director, EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$194,500	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	No
	Annual Net County Cost:	\$ -0-	For Fiscal Year:	09/10
SOURCE OF FUNDS: Developer Contributions 10%, TUMF 90%			Positions To Be Deleted Per A-30	<input type="checkbox"/>
			Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

BY: Jennifer L. Sargent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: None

Date: March 23, 2010

xc: EDA, Transp, Auditor

Kecia Harper-Ihem
Clerk of the Board

By: [Signature]
Deputy

Prev. Agn. Ref.: 4/22/08, 9.6; 3/18/08, 3.21

District: 3

Agenda Number:

3.19

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
ROBERT E. BYRD, AUDITOR-CONTROLLER
BY: Samuel Wong 3/9/10
SAMUEL WONG

Departmental Concurrence

John C. Murphy
Luce, Forward, Hamilton & Scripps

Policy

Policy

Consent

Consent

Dep't Recomm.:

Per Exec. Ofc.:

RECOMMENDED MOTION: (Continued)

3. Allocate the sum of \$187,000 to purchase Assessor's Parcel Number 392-330-015 and \$7,500 to pay all related transaction costs.

BACKGROUND:

Clinton Keith Road is proposed to be constructed as a six-lane urban arterial between Antelope Road and State Route 79 in Western Riverside County, in accordance with County General Plan Amendment (CGPA) 409, adopted December 19, 2000. The length of the proposed project, including the existing alignment and the extension of alignment, is approximately 3.4 miles (5.5 kilometers).

The Clinton Keith Road Extension Supplemental Environmental Impact Report No. 398 was approved by the Board of Supervisors on February 7, 2006.

During 2006-2007, the Department of Facilities Management (now known as Economic Development Agency) negotiated with Victor Lopez, Jr., Abel Fraire, Judy Fraire and Apostolic Assembly of the Faith in Christ Jesus, Inc., the owners of Assessor's Parcel Number 392-330-015 (Lopez). Overland, Pacific & Cutler, Inc. (OPC) was retained by the County as relocation consultants and provided relocation assistance to Lopez.

On March 28, 2008, the Board approved Resolution No. 2008-002, Notice of Intention to Adopt a Resolution of Necessity Regarding the Project to Improve Clinton Keith Road and Other Roads in Western Riverside County.

On April 22, 2008, the Board approved Resolution No. 2008-003, Authorizing Resolution of Necessity Regarding the Project to Improve Clinton Keith Road and Other Roads in Western Riverside County.

On October 16, 2008, the complaint was filed on behalf of the County of Riverside and the probable just compensation in the amount of \$423,000 was deposited on December 5, 2008. On March 19, 2009, Lopez withdrew the sum of \$423,000.

The Economic Development Agency (EDA) has negotiated the acquisition of Assessor's Parcel Number 392-330-015 from Lopez for an all inclusive settlement amount of \$610,000, including relocation. The settlement amount of \$610,000 was previously offered to Lopez prior to litigation. The settlement amount of \$610,000 is offset by the \$423,000 deposited by the County and withdrawn by Lopez. The net settlement amount is \$187,000 (\$610,000 minus \$423,000). The following summarizes the settlement with Lopez.

BACKGROUND: (Continued)

Settlement Amount (All Inclusive)	\$610,000
Deposit Withdrawn by Lopez	<u>(\$423,000)</u>
Total Net Settlement	\$187,000

The legal services of Luce, Forward, Hamilton & Scripps, LLP have been retained under the guidance of County Counsel.

FINANCIAL DATA:

The following summarizes the funding necessary for the all inclusive settlement to acquire Assessor's Parcel Number 392-330-015:

Net Settlement Amount (\$610,000-\$423,000 = \$187,000)	\$187,000
Preliminary Title Report:	\$-0-
County Appraisal:	\$-0-
Acquisition Administration	\$7,500
Total Estimated Acquisition Costs:	\$194,500

EDA has already covered the costs for due diligence (appraisal and title report) and has been reimbursed by the Transportation Department. The remaining costs will be paid directly by the Transportation Department.

All costs associated with this property acquisition are fully funded in the Transportation Department's budget for FY 2009/10. Thus, no net county cost will be incurred as a result of this transaction.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

COUNTY OF RIVERSIDE,
Plaintiff,
v.
VICTOR LOPEZ, JR., an Individual, et al.
Defendants.

Case No. RIC 510826
The Hon. Douglas E. Weathers
Dept. 3
**[PROPOSED] FINAL JUDGMENT IN
CONDEMNATION**
**[Stipulation for Final Judgment in
Condemnation Filed Concurrently]**
Complaint Filed: October 16, 2008
Trial Date: November 30, 2009

1 Plaintiff County of Riverside ("County"), on the one hand, and defendants Victor Lopez, Jr.,
2 Abel Fraire, Judy Fraire and Apostolic Assembly of the Faith in Christ Jesus, Inc. (collectively,
3 "Defendants") having executed a Stipulation for Final Judgment in Condemnation ("Stipulation") as
4 to the entire action and having requested the Court to enter a Final Judgment in Condemnation
5 ("Judgment") consistent with the Stipulation regarding the entire action and the County's
6 condemnation of the interests in real property described in the attached Exhibit "A"; and having
7 waived a statement of decision, notice of entry of judgment, costs and fees, and the right to appeal
8 from judgment after entry:

9 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS**
10 **FOLLOWS:**

11 **1. The County's Action to Acquire the Property.**

12 A. The County commenced the above-entitled action in eminent domain to acquire
13 a fee interest consisting of all rights, title and interests free and clear of all liens, encumbrances,
14 assessments, deeds of trust, easements, leases, taxes, security or other interests in the real property
15 designated as County Parcel Numbers 0472-006, assigned Riverside County Assessor's Parcel
16 Number 392-330-015, located in the County of Riverside, State of California ("Property"). The
17 Property is further described in the attached Exhibit "A" incorporated by this reference.

18 B. The Property is required for construction of public improvements consisting of
19 a six-lane urban arterial between Antelope Road and State Route 79 in western Riverside County, to
20 improve Clinton Keith Road and other roads in western Riverside County ("Project") and for public
21 uses.

22 C. Defendants are the fee owners of the Property.

23 D. All remaining defendants with an interest in the Property have been dismissed,
24 defaulted or have disclaimed any interest in the Property.

25 **2. Payment of Just Compensation.**

26 A. Defendant will be paid \$610,000 as just compensation for the acquisition of its
27 interests in the Property. Defendants have received from the County a relocation benefit in the
28

1 amount of \$3,500 on June 26, 2009. Defendants accept the total sum of \$610,000 as the full amount of
2 just compensation for its interests in the Property and for all damages resulting from the taking.

3 B. The sum of \$610,000, consists of the following:

4 (i) The County deposited the sum of \$423,000 with the County Treasurer on
5 December 5, 2008, as the amount of probable compensation in connection
6 with the County's application for order for immediate possession of the
7 Property. The sum of \$423,000 was withdrawn by Defendants on March 19,
8 2009, and shall act as a credit toward the final settlement amount.

9 (ii) The County shall deposit the sum of \$187,000, constituting the remaining
10 settlement balance (\$610,000 minus \$423,000). The Clerk of the Court shall
11 accept the \$187,000 deposit from the County. Within two weeks of increasing
12 the deposit to \$187,000, the County shall mail notice of the deposit to
13 Defendants' counsel of record, Robert M. Miller, at 401 W. A Street,
14 Suite 1720, San Diego, California, 92101. Defendants are entitled to
15 withdraw the deposit in the amount of \$187,000 after receiving notice that the
16 deposit has been increased.

17 (iii) The Clerk of the Court shall compute the interest earned by (1) the sum of
18 \$423,000 deposited by the County with the Clerk of the Court between
19 December 5, 2008 and March 19, 2009; and (2) any interest earned on the
20 sum of \$187,000 from the date deposited with the Clerk of the Court
21 until withdrawn by Defendants. The Clerk of the Court shall issue a warrant to
22 the County for the amount of the accrued interest as follows: Client Trust
23 Account for the County of Riverside c/o John C. Murphy, Esq., Luce, Forward,
24 Hamilton, & Scripps, LLP, 2050 Main Street, Suite 600, Irvine, CA 92612.

25 C. Each party shall bear their own attorneys' fees and litigation expenses.

26 D. Payment of the total sum shall be made no later than 60 days from the date of
27 entry of Judgment.

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E. Defendants waive all claims and defenses in the action including but not limited to:

- Any claims for further award or payment, and any portion of any award or payment for the taking of the Property;
- Any claim for damages resulting from the taking, including, but not limited to, severance damages, loss of goodwill, loss of or damage to improvements pertaining to the realty, fixtures, and equipment, and/or inventory;
- Any claim for precondemnation damages, claims for interest, attorneys' fees, litigation expenses, relocation benefits and/or costs, and any and all other kinds of compensation, damage, causes of action or other claims arising out of this action and/or the Project and/or the condemnation by the County of the Property.

3. Mutual Release.

Defendants, for themselves, and for all of their past, present, and future agents, employees, partners, partnerships, co-ventures, owners, co-owners, contractors, subcontractors, business entities or divisions, attorneys, administrators, predecessors, successors, successors-in-interest, and assigns, trusts, trustees, beneficiaries, heirs, executors, and designees, and each of their agents, employees and representatives hereby release and forever discharge the County and each of its past, present and future agents, employees, predecessors, successors, successors-in-interest, assigns, partners, partnerships, companies, corporations, co-venturers, trusts, trustees, beneficiaries and designees, and their agents, employees and representatives from any and all liability whatsoever, including all claims, demands, causes of action, obligations, agreements, costs, fees, expenses, and damages of whatever kind or nature arising out of the action and/or the Project and/or the condemnation by the County of the Property.

4. Condemnation of Defendants' Interest.

Upon payment as described in Section 2, Defendants' interest in and to the Property shall be condemned to the County for the public uses and purposes comprising the Project as follows: Fee ownership consisting of all rights, title and interests free and clear of all liens, encumbrances,

1 assessments, deeds of trust, easements, leases, taxes, security or other interests in the real property
2 designated as County Parcel Number 0472-006. Title to the fee interests shall vest in the County on
3 the date that a Final Order of Condemnation is recorded by the Recorder's Office of the County of
4 Riverside, California.

5 **5. Purpose and Authority of the Taking.**

6 A. The County is and was authorized and entitled to exercise the power of eminent
7 domain for public uses Article I, section 19, of the California Constitution, California Government
8 Code section 25350.5, and Part 3, Title 7 of the California Code of Civil Procedure, including sections
9 1240.010, 1240.020, 1240.030, 1240.040, 1240.110, 1240.120, 1240.140, 1240.410, 1240.510, and
10 1240.610.

11 B. The use for which the County seeks to condemn the Property, to wit, in
12 connection with the Project and for road improvements, is and was authorized by law and is and was a
13 public use; the public interest, safety and necessity require the Project; the Project is and was planned
14 and located in the manner that will be the most compatible with the greatest public good and the least
15 private injury; and the Property is necessary for the Project.

16 **6. Date of Possession and Cancellation of Taxes.**

17 The County is authorized and empowered to enter upon and take immediate possession of the
18 Property, and to remove from the Property any and all persons, obstacles, improvement, or structures
19 of every kind or nature situated on the Property and to fully possess and use the Property.

20 A Writ of Assistance may issue ex parte upon affidavit of a representative of the County
21 showing that the Defendants or occupants, if any, have failed to deliver possession of the Property
22 upon the demand of the County pursuant to this Judgment.

23 For the Property the County acquires by this Judgment, all taxes, assessments, penalties and
24 costs which are a lien on the Property and which are apportioned or imposed in that portion of the
25 fiscal year from and including the date the County takes possession of the Property and thereafter, are
26 canceled under sections 5081 et seq. of the Revenue and Taxation Code.

27 **7. Waiver.**

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1 This settlement includes an express waiver of California Civil Code section 1542, which
2 provides:

3 A general release does not extend to claims which the creditor does
4 not know or suspect to exist in his or her favor at the time of executing
5 the release, which if known by him or her must have materially
6 affected his or her settlement with the debtor.

7 **8. Entry of Judgment and Final Order.**

8 Upon entry of this Judgment and after payment of the sums in Section 2, the Court shall,
9 on application of any party and without further notice to any party, make a Final Order of
10 Condemnation.

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12 DATED: _____, 2009

JUDGE OF THE SUPERIOR COURT

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1 PROOF OF SERVICE

2 *Riverside County Flood Control and Water Conservation District v. Kingsley Investment, et al.*

3 Riverside County Superior Court, Case No. RIC 487450; Judge: Douglas E. Weathers, Dept: 3

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Orange, State of California. My business address is 2050 Main Street,
6 Suite 600, Irvine, California 92614.

7 On October ____, 2009, I served true copies of the following document(s) described as
8 **[PROPOSED] FINAL JUDGMENT IN CONDEMNATION** on the interested parties in this
9 action as follows:

10 Robert M. Miller, Esq.
11 Law Offices of Robert M. Miller
12 401 West "A" Street, Suite 1720
13 San Diego, CA 92101
14 Telephone: (619) 239-2611

15 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at
16 the addresses listed in the Service List and placed the envelope for collection and mailing, following
17 our ordinary business practices. I am readily familiar with Luce, Forward, Hamilton & Scripps LLP's
18 practice for collecting and processing correspondence for mailing. On the same day that the
19 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business
20 with the United States Postal Service, in a sealed envelope with postage fully prepaid.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23 Executed on October ____, 2009, at Irvine, California.

24 _____
25 LORIN MORENO
26
27
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1 John C. Murphy, State Bar No. 94192
Brad B. Grabske, State Bar No. 229058
2 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
2050 Main Street, Suite 600
3 Irvine, California 92614
Telephone No. (949) 732-3700
4 Fax No. (949) 732-3739

Exempt From Fees Per
Govt. Code § 6103

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

COUNTY OF RIVERSIDE,

Plaintiff,

v.

VICTOR LOPEZ, JR., an Individual, et al.

Defendants.

Case No. RIC 510826

The Hon. Douglas E. Weathers
Dept. 3

**STIPULATION FOR FINAL JUDGMENT
IN CONDEMNATION**

**[Proposed Final Judgment In
Condemnation Filed Concurrently]**

Complaint Filed: October 16, 2008

Trial Date: November 30, 2009

1 Plaintiff County of Riverside ("County"), on the one hand, and defendants Victor Lopez, Jr.,
2 Abel Fraire, Judy Fraire and Apostolic Assembly of the Faith in Christ Jesus, Inc. (collectively,
3 "Defendants"), on the other, stipulate to the facts, terms, and conditions contained in the
4 [Proposed] Final Judgment in Condemnation ("Judgment"), filed concurrently and incorporated
5 by this reference.

6 The County and Defendants request that the Court enter a Final Judgment in Condemnation
7 substantially in the form of the concurrently filed Judgment.

8 The County seeks to acquire a fee interest consisting of all rights, title and interests free and
9 clear of all liens, encumbrances, assessments, deeds of trust, easements, leases, taxes, security or
10 other interests in real property assigned County Parcel Number 0472-006, also known as Riverside
11 County Assessor's Parcel Number 392-330-015 ("Property"), located in the County of Riverside,
12 State of California. The Property is described in Exhibit "A" to the Judgment.

13 It is the intent and effect of this Stipulation that the Judgment, when signed, and the payment
14 made pursuant thereto, shall end, finally and forever, any claims to compensation of any kind or
15 nature which Defendants had, now have, or may assert in the future arising out of this action; the
16 condemnation by the Property; and the construction of public improvements consisting of a six-lane
17 urban arterial between Antelope Road and State Route 79 in western Riverside County, to improve
18 Clinton Keith Road and other roads in western Riverside County ("Project"). The County and
19 Defendants stipulate to the Judgment in release and discharge by the County and Defendants of any
20 and all claims and causes of action arising out of the events or incidents referred to in the pleadings in
21 this action.

22 Counsel for each of the parties to this Stipulation, where applicable, represents that he has
23 fully explained to his client the legal effect of this Stipulation and Judgment, and that the settlement
24 and compromise stated herein is final and conclusive forthwith, subject to the conditions stated herein,
25 and each attorney represents that his client has freely consented to and authorized this Stipulation.

26 This Stipulation may be enforced by any party hereto by a motion under California Code of
27 Civil Procedure section 664.6, or by any procedure permitted by law in the Superior Court of
28 Riverside County.

1 Each party hereto further waives a Statement of Decision, Notice of Entry of Judgment,
2 costs, fees and the right to appeal from Judgment after entry.

3
4 DATED: _____, 2009 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

5
6 By: _____
7 Brad B. Grabske
8 Attorneys for the County of Riverside

9 DATED: 11/24/09, 2009 LAW OFFICE OF ROBERT M. MILLER, APC

10 By: Robert Miller
11 Printed Name: Robert M. Miller
12 Attorney for defendants Victor Lopez, Jr., Abel
13 Fraire, Judy Fraire and Apostolic Assembly of the
14 Faith in Christ Jesus, Inc.

15 DATED: Nov 23, 2009 APOSTOLIC ASSEMBLY OF THE FAITH IN CHRIST
16 JESUS, INC.

17 By: [Signature]
18 Printed Name: Victor E Lopez Jr
19 Title: PASTOR

20 DATED: Nov 23, 2009

21 By: [Signature]
22 Victor Lopez, Jr.

23 DATED: Nov 22, 2009

24 By: Abel Fraire
25 Abel Fraire

26 DATED: Nov 22, 2009

27 By: Judy Fraire
28 Judy Fraire

(Additional signature(s) on following page)

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DATED: ~~_____~~ **MAR 23 2010**

COUNTY OF RIVERSIDE

By: *Marion Ashley*

Printed Name: Marion Ashley

Title: Chairman, Board of Supervisors

ATTES:
KECIA HARPER-IHEM, Clerk

By: *Kecia Harper-Ihem*
DEPUTY

3.19 **MAR 23 2010**