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

FROM: Economic Development Agency & Transportation Department

SUBMITTAL DATE: August 19, 2010

SUBJECT: Reimbursement for Portion of Varner Road Improvement Project-Thousand Palms

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Chairman to execute the Reimbursement Agreement by and between the Redevelopment Agency and the County of Riverside; and

2. Authorize the reimbursement to the Redevelopment Agency as specified in the attached agreement for the Varner Road Improvement Project.

BACKGROUND: (Commences on Page 2)

Juan Perez
Director of Transportation

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	**Current F.Y. Total Cost:**	$ 343,186	**In Current Year Budget:**	Yes
	Current F.Y. Net County Cost:	$ 343,186	**Budget Adjustment:**	No
	Annual Net County Cost:	$ 0	**For Fiscal Year:**	2010/2011

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: Yes

SOURCE OF FUNDS: Developer Cash-in-Lieu of Construction fees paid to Transportation Department by Robertson's Ready Mix in Thousand Palms for frontage street improvements (100%)

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL
BY: MARSHA L. VICTOR DATE 8/16/10

Departmental Concurrence

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone 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: August 31, 2010
xc: EDA, RDA, Transp.

Kecia Harper-Ihem
Clerk of the Board
By: Deputy

(Comp. Item 4.4)

Prev. Agn. Ref.: See list on Page 2 | **District:** 4 | **Agenda Number:** 3.51

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

EDA-0[illegible]-F11 [illegible] signature
Form 11 (Rev 08/2010)

BACKGROUND:

The Monterey Avenue and Varner Road Street Improvement Project is complete. As a part of the project, street improvements were completed along the frontage of Robertson's Ready Mix located at 72640 Varner Road in Thousand Palms.

On February 14, 2006, Robertson's Ready Mix paid to the Riverside County Transportation Department a deposit of $343,186, in-lieu of constructing ultimate street improvements along their frontage at 72460 Varner Road, in Thousand Palms. The street improvements were a requirement of their approved Conditional Use Permit #03314.

The street improvements have been completed by the Redevelopment Agency (RDA), and RDA is asking that the in-lieu fees, paid by Robertson's Ready Mix, be used to reimburse the RDA for the improvements constructed by the RDA as a part of the Varner Road and Monterey Street Improvement Project. The actual costs paid by the RDA, which are subject to reimbursement, are $373,607; reimbursement will not exceed cash-in-lieu deposit of $343,186. Attached is the reimbursement agreement for execution by the Board of Supervisors and by the Board of Directors.

Below is a timeline of the project:

December 14, 2004, Agenda Item 3.8 – The Board of Supervisor made the findings for the street improvement project.

December 14, 2004, Agenda Item 4.2 – The Board of Directors approved the agreement between the RDA and Albert A. Webb and Associates to develop the street improvement plans.

February 14, 2006, Robertson's Ready Mix paid a deposit of $343,186 in lieu of constructing ultimate street improvements along their frontage at 72460 Varner Road. (CUP03314)

June 19, 2007, Agenda Item 4.2 – The Board of Directors conducted public hearing, approved the project and adopted a mitigated negative declaration for the project.

August 8, 2007, Agenda Item 4.2 – The Board of Directors approved plans and construction specifications and authorized Clerk of the Board to Advertise for Bids.

December 11, 2007, Agenda Item 4.6 - The Board of Directors awarded a construction contract to Hazard Construction and awarded a construction management contract to Albert A. Webb & Associates. The Board of Directors also approved the project budget of $10,200,000.

Street improvements on Varner Road completed on June 30, 2009.

Contract No. 10-08-008
Riverside Co. Transportation

REIMBURSEMENT AGREEMENT
BY AND BETWEEN THE
REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE
AND THE COUNTY OF RIVERSIDE
FOR THE VARNER ROAD IMPROVEMENT PROJECT

THIS REIMBURSEMENT AGREEMENT, hereinafter AGREEMENT is entered into on this 31st day of August, 2010, by and between the Redevelopment Agency for the County of Riverside, a public body corporate and politic in the State of California, hereinafter AGENCY and the County of Riverside by and through the Riverside County Transportation Department hereinafter COUNTY, hereinafter collectively referred to as the Parties.

WITNESSETH

WHEREAS, AGENCY is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provisions of the Community Redevelopment Law which is Part 1 of Division 24 of the California Health and Safety Code (commencing with Section 33000 et seq.);

WHEREAS, the County of Riverside has adopted by Ordinance No. 638, on December 22, 1986, a redevelopment plan for the Desert Communities Project Area hereinafter PROJECT AREA;

WHEREAS, the redevelopment plan, hereinafter PLAN was adopted in order to eliminate blight and revitalize the substandard physical and economic conditions that exist within the PROJECT AREA, which is composed of several non-contiguous sub areas, including the Thousand Palms Sub Area, hereinafter the Sub-Area;

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WHEREAS, a portion of the Thousand Palms community, hereinafter the Community, is within the Sub-Area and has experienced significant economic and physical deterioration;

WHEREAS, pursuant to Section 33125 of the California Health and Safety Code, the AGENCY is authorized to make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

WHEREAS, pursuant to Section 33421 of the California Health and Safety Code a redevelopment agency may cause, provide to undertake or make provision with other agencies for the installation, or construction of streets, utilities, parks, playgrounds and other public improvements necessary for carrying out in the project area the redevelopment plan;

WHEREAS, pursuant to Section 33445 of the California Health and Safety Code, upon specific findings, a redevelopment agency may, with the consent of the legislative body, pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure or other improvement that is publicly owned either within or without the project area;

WHEREAS, AGENCY has requested reimbursement for the improvements undertaken by AGENCY on Varner Road related to the frontage of Robertson's Ready Mix, hereinafter the Project;

WHEREAS, the Project has been completed and as such benefits the PROJECT AREA and Community by enhancing traffic circulation and eliminating blighting conditions within the PROJECT AREA and meets a primary objective of the PLAN;

WHEREAS, the Project is consistent with the PLAN and the Implementation Plan for the PROJECT AREA; and

WHEREAS, the COUNTY agrees to reimburse AGENCY for COUNTY approved costs of the Project;

NOW, THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the Parties hereto do hereby agree as follows:

SECTION 1. Purpose of AGREEMENT. The purpose of this AGREEMENT is to set forth the terms and conditions by which COUNTY will reimburse AGENCY for the actual costs associated with the construction of the Project by AGENCY.

SECTION 2. Location of the Project. The Project is located on Varner Road, between Ramon Road and Monterey Avenue, along the frontage of Robertson's Ready Mix, with the address of 72460 Varner Road, in the unincorporated community of Thousand Palms, as more specifically detailed in Exhibit A, which is attached hereto and made a part hereof by this reference.

SECTION 3. Scope of Work. The work performed by AGENCY includes construction for approximately 1,335 linear feet of street improvements, including road widening, curb, gutter, new driveway, sidewalk, repaving of existing street and new striping on Varner Road as outlined in Exhibit B, which is attached hereto and made a part hereof by this reference.

SECTION 4. Construction of the Project. The contractor(s) for the Project was selected by AGENCY. AGENCY has caused the construction of the Project which was carried out in compliance with all applicable laws, including, but not limited to, all applicable federal and state and local environmental, occupational, safety and health standards; nondiscrimination requirements; accessibility for the disabled; and prevailing wage laws.

SECTION 5. Payment. COUNTY shall reimburse AGENCY for the actual cost of the improvements for an amount not-to-exceed Three Hundred Forty-Three Thousand One Hundred Eighty-Five Dollars and Ninety-Seven Cents ($343,185.97) which shall constitute the full and complete financial obligation of the COUNTY. Said

amount shall include, but is not limited to, all of AGENCYs charges for Project construction.

AGENCY shall invoice COUNTY for the work performed at the completion of the project and submit documentation to verify reimbursable expenditures by AGENCY.

In addition, AGENCY has ensured that the contractor(s) to whom the contract was awarded and any sub-contractor(s) under him were paid not less than the specified prevailing wage rate of wages as determined by the general prevailing wage determination made by the State of California's Director of Industrial Relations, to all workmen employed in the execution of the improvements under this AGREEMENT. AGENCY further ensured that each contractor(s) and any subcontractor(s) kept an accurate record showing the name, occupation and actual per diem wages paid to each workman employed by him in connection with the work performed under this AGREEMENT. The records shall be kept open at all reasonable hours to the COUNTY for inspection for a period of no less than seven years from completion of the Project.

SECTION 6. Permits. AGENCY obtained, secured or caused to be secured any and all permits and/or clearances which were and may be required by COUNTY or any other federal, state or local governmental or regulatory agency relating to the Project.

SECTION 7. Principal Contact Persons. The following individuals are hereby designated to be the principal contact persons for their respective parties:

AGENCY: Leah Rodriguez, Project Manager
Redevelopment Agency for the County of Riverside
44-199 Monroe St., Suite B, Indio, CA 92201
(760) 863-2534

COUNTY: Alan French, Senior Civil Engineer
Riverside County Transportation Department
4080 Lemon Street, 8th Floor, Riverside, CA 92501
(951) 955-3152

SECTION 8. Conflict of Interest. No member, official or employee of AGENCY or COUNTY shall have any personal interest, direct or indirect, in this AGREEMENT nor shall any such member, official or employee participate in any decision relating to this AGREEMENT which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

SECTION 9. Interpretation and Governing Law. This AGREEMENT and any dispute arising there under shall be governed and interpreted in accordance with the laws of the State of California. This AGREEMENT shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this AGREEMENT, all parties having been represented by counsel in the negotiation and preparation hereof.

SECTION 10. No Third Party Beneficiaries. This AGREEMENT is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action based upon the provisions of this AGREEMENT.

SECTION 11. Indemnification. Except as to any legal challenge or claim brought by any person or entity questioning the use of redevelopment funds for the purposes set forth herein that is the subject of this AGREEMENT:

(i) AGENCY indemnifies and holds COUNTY, its elected officials, officers, directors, affiliates, agents and employees free and harmless from liability to any person or entity not a party to this AGREEMENT from any damage, loss or injury to person and/or property which primarily relates to or arises from the negligence or willful misconduct of AGENCY, its officers, agents, or employees in the execution or implementation of this AGREEMENT;

(ii) COUNTY indemnifies and holds AGENCY, its officers, agents, or employees free and harmless from any person or entity not a party to this

AGREEMENT from any damage, loss or injury to person and/or property which primarily relates to or arises from the negligence or willful misconduct of COUNTY, its elected officials, officers, directors, affiliates, agents, or employees in the execution or implementation of this AGREEMENT.

SECTION 12. Limitation of Liability. In no event will either COUNTY or the AGENCY, their elected officials, officers, directors, affiliates, employees, agents, representatives, or shareholders be liable (either in contract, warranty, tort, or otherwise) to the other or any of its officers, directors, affiliates, employees, agents, representatives, or shareholders for any consequential, incidental or indirect damages, including costs, profits, or for any exemplary or punitive damages. The Parties agree that neither party will be liable for acts of God, fire, accidents or other occurrences beyond their reasonable control (whether like or unlike any of these enumerated herein) which prevent either party from partially or completely performing its obligations hereunder.

SECTION 13. Section Headings. The Section headings herein are for the convenience of the Parties only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this AGREEMENT.

SECTION 14. Time Limit. AGENCY has completed the work that is the subject of this AGREEMENT. Payment of the reimbursement amount shall be paid within a period of ninety (90) days of the date of execution of this AGREEMENT. In the event said ninety (90) day period expires prior to the reimbursement, the terms of this AGREEMENT may be extended upon written consent of Parties. Nothing in this Section shall be deemed a waiver of any or all claims or other actions by either party in regard to any breach of this AGREEMENT.

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SECTION 15. Entire Agreement. This AGREEMENT is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. Any amounts to or clarification necessary to this AGREEMENT shall be in writing and acknowledged by all Parties to the AGREEMENT.

SECTION 16. Amendments and Modifications. It is agreed that the rights, interest, understandings, agreements and obligations of the respective parties pertaining to the subject matter of this AGREEMENT may not be amended, modified or supplemented in any respect except by a subsequent written instrument evidencing the express written consent of each of the parties hereto and duly executed by the Parties.

SECTION 17. Successors and Assigns. This AGREEMENT shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the Parties hereto.

SECTION 18. Termination. This AGREEMENT may be terminated upon any of the following events:

i) By either COUNTY or AGENCY if the other party breaches any of the material terms of this AGREEMENT, which default is not cured within thirty (30) days following written notice of such default of the defaulting party. If the default is not cured within the thirty (30) day period, the non-defaulting party may terminate this AGREEMENT by giving notice of its decision to do so.

ii) In the event that either party becomes insolvent; makes an assignment for the benefit of creditors; becomes the subject of any bankruptcy, reorganization or arrangement proceeding or defaults in any obligation, which default would foreclose such party from exercising its right or prevent it from paying its obligations hereunder, then such action shall be a default hereunder and this AGREEMENT may be terminated by written notice to the defaulting party.

iii) By either COUNTY or AGENCY for its convenience and without cause upon thirty (30) days written notice to the other party.

Notices shall be sent via U.S. Postal Service registered mail return receipt request, to the individual identified in Section 7, above.

SECTION 19. Remedies.

In the event AGENCY terminates this AGREEMENT under Section 19 (iii) above, AGENCY shall only be entitled to reimbursements for invoices submitted to COUNTY for work completed prior to COUNTY receiving the thirty (30) days written notice.

In the event COUNTY terminates this AGREEMENT for AGENCY's failure to perform in accordance with Section 3 above, COUNTY shall be entitled to deny reimbursement to AGENCY for uncompleted tasks as outlined in Section 3 above, unless AGENCY's failure is a result of the following:

i) COUNTY breach.

ii) Acts of God, fires, accidents or other occurrences beyond the reasonable control of AGENCY (whether like or unlike any of these enumerated herein).

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IN WITNESS WHEREOF, AGENCY and COUNTY have executed this AGREEMENT as of the date first above written.

REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE

Marion Ashley, Chairman
Board of Directors

COUNTY OF RIVERSIDE

Marion Ashley, Chairman
Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

BY: Lorraine Canova
Deputy

FORM APPROVED COUNTY COUNSEL
BY: MARSHA L. VICTOR 8/17/10
DATE

APPROVED AS TO FORM:
Pamela J. Walls
Agency Counsel

BY: 8/17/10
Deputy **Michelle Clack**

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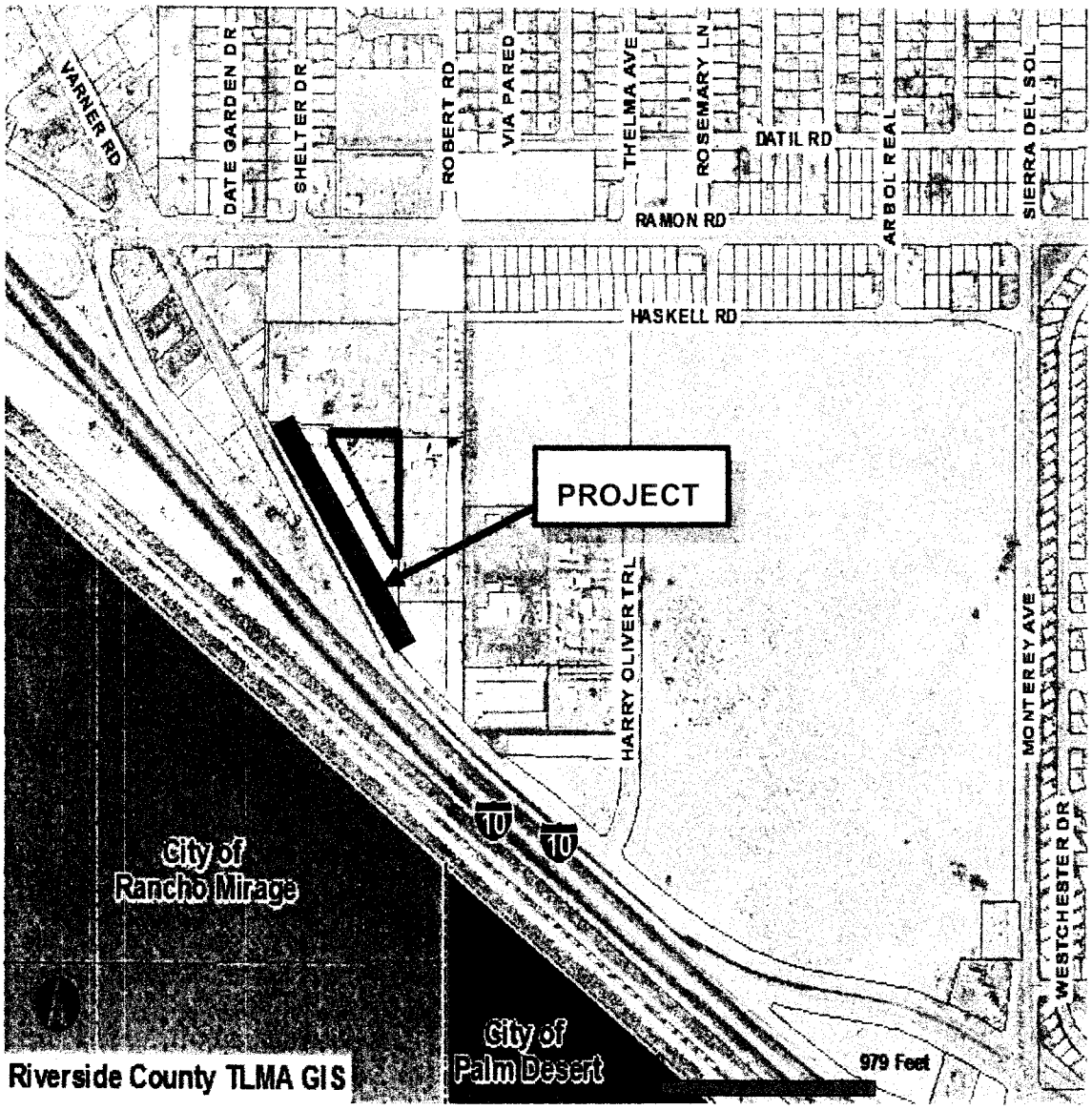
EXHIBIT A

LOCATION OF PROJECT

72460 Varner Road, Thousand Palms CA 92276



Selected parcel(s):
693-010-017

EXHIBIT B

Scope of Work

Project description: The Project included the construction of street improvements on Varner Road, along street frontage of Robertson's Ready Mix at 72-460 Varner Road, in Thousand Palms. AGENCY oversaw and/or performed the following tasks associated with the Project for the cost shown:

BASE BID

NO.	ITEM	ESTIMATED QUANTITY	UNIT	UNIT BID PRICE (IN FIGURES)	DOLLAR AMOUNT (IN FIGURES)
1	ROADWAY EXCAVATION	1,860.00	C.Y.	$20.00	$37,200.00
2	COLD PLANE ASPHALT CONCRETE PAVEMENT (0.15')	18.00	S.Y.	$2.80	$50.40
3	ASPHALT CONCRETE (TYPE A)	945.00	TON	$75.00	$70,875.00
4	AGGREGATE BASE (CLASS II)	1,302.00	C.Y.	$28.00	$36,456.00
5	ASPHALT RUBBER HOT MIX (TYPE GG)	567.00	TON	$101.00	$57,267.00
6	MINOR CONCRETE (CURB AND GUTTER) (CRS 200-TYPE A-6)	1,335.00	L.F.	$16.00	$21,360.00
7	MINOR CONCRETE (COMMERCIAL DRIVEWAY) (CRS 207A)	2,098.00	S.F.	$9.00	$18,882.00
8	MINOR CONCRETE (4" THICK SIDEWALK) (CRS 400 & 401)	4,800.00	S.F.	$3.20	$15,360.00
9	CONCRETE BARRIER (CTSP A76A-TYPE 60C)	85.00	L.F.	$142.00	$12,070.00
10	CONCRETE BARRIER END ANCHORAGE (CTSP A76B-TYPE 60C)	1.00	EACH	$1,100.00	$1,100.00
11	REMOVE AND SALAVAGE EXISTING STREET LIGHT POLE	1.00	EACH	$3,000.00	$3,000.00
12	PARKWAY DRAINAGE INLET (APWA STD. 151-O) (4')	12.00	L.F.	$508.00	$6,096.00
13	MOBILIZATION*	0.0432	L.S.	$ 500,000.00	$21,600.00
14	CLEARING AND GRUBBING*	0.0432	L.S.	$ 20,000.00	$864.00
15	DUST ABETMENT*	0.0432	L.S.	$ 140,000.00	$6,048.00
16	TRAFFIC CONTROL*	0.0432	L.S.	$ 50,000.00	$2,160.00
17	STORMWATER AND NON-STORMWATER POLLUTION CONT*	0.0432	L.S.	$ 12,000.00	$518.40
18	OBTAIN ENCROACHMENT PERMIT*	0.0432	F.A.	$ 10,000.00	$432.00
	BASE BID SUB TOTAL				**$311,338.80**

*Note: Cost for items 13 through 18 are estimated based on Robertson's frontage costs vs. overall project costs (4.32%)

Total Construction Cost	$	311,338.80
Inspection (3%), Survey & Staking (3%)		18,680.33
Planning, Engineering, Construction Management (14%)		43,587.43
TOTAL:	**$**	**373,605.56**

Note: Maximum amount reimbursable is $343,185.97 cash deposit paid by Robertson's Ready Mix

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