

313



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

FROM: Economic Development Agency and Transportation Department

SUBMITTAL DATE:
January 20, 2011

SUBJECT: Airport Boulevard Railroad Grade Separation Improvement Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Make the following findings in accordance with Section 33445 of the Health and Safety Code:
 - a) The Airport Boulevard Railroad Grade Separation Improvement Project is of benefit to the Desert Communities Project Area (DCPA) by helping to enhance traffic circulation within the community and eliminate blight within the project area;
 - b) No other reasonable means of financing the project are available to the community, as the County General Fund does not have the funds needed for the proposed improvements;
 - c) The payment of the funds for the cost of the improvements is consistent with the Implementation Plan for the DCPA which identifies road infrastructure as a necessary improvement;

(Continued)

Juan Perez
Director of Transportation

Rosa Brandl for
Robert Field
Assistant County Executive Officer/EDA
By Lisa Brandl, Managing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 4,000,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: Yes

SOURCE OF FUNDS: Redevelopment Agency Capital Improvement Funds- Desert Communities Project Area	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Jennifer V. Sargent*
Jennifer V. Sargent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, 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: February 1, 2011
 xc: EDA, RDA, Transp., Auditor
 (Comp. Item 4.1)

Kecia Harper-Ihem
 Clerk of the Board
 By: *Kecia Harper-Ihem*
 Deputy

3.5

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: *Samuel Wong*
 DATE: 1-18-11
 Departmental Conc: SAMUEL WONG
 FORM APPROVED COUNTY COUNSEL
 BY: *Anita C. Willis*
 DATE: 1-18-11
 ANITA C. WILLIS

Policy
 Consent
 Policy
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

RECOMMENDED MOTION: (Continued)

2. Approve and authorize the Chairman of the Board to execute the Reimbursement Agreement by and between the Redevelopment Agency for the County of Riverside; and
3. Consent to the payment by the Redevelopment Agency as identified in the Reimbursement Agreement for the Airport Boulevard Railroad Grade Separation Improvement Project.

BACKGROUND:

The proposed Airport Boulevard Railroad Grade Separation Improvement Project would grade separate the current at-grade crossing of Airport Boulevard with the Union Pacific Railroad (UPRR) within the unincorporated community of Thermal. Traffic is stopped on Airport Boulevard as UPRR trains pass through the area several times a day. The funding to be provided will allow the Riverside County Transportation Department to increase the planned two lane grade separation into a four lane grade separation structure. The proposed improvements to be provided in this Reimbursement Agreement will benefit the community by providing improvement traffic circulation and eliminating blighted conditions for residents within the DCPA and meets a primary objective of the Implementation Plan.

The Riverside County Transportation Department will provide complete oversight for the installation of the improvements for the project including compliance with all local, state, and federal laws and regulations. The reimbursement of the proposed improvements will be paid entirely from Redevelopment Agency DCPA funds and will have no impact on the County's General Fund.

§33445 of the Health and Safety Code provides that a Redevelopment Agency may assist in the design and development of improvements that are of benefit to the project area in the immediate neighborhood in which the project is located. County Counsel has review and approved the Reimbursement Agreement as to form therefore, Agency staff recommends that the Board of Supervisors make the required findings for the proposed Airport Boulevard Railroad Grade Separation Improvement Project, approve and execute the Reimbursement Agreement with the Redevelopment Agency, and consent to the payment by the RDA.

Attachments:
Reimbursement Agreement (3)

1 **REIMBURSEMENT AGREEMENT**
2 **BY AND BETWEEN THE**
3 **REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE**
4 **AND THE COUNTY OF RIVERSIDE**
5 **FOR THE AIRPORT BOULEVARD**
6 **RAILROAD GRADE SEPARATION IMPROVEMENT PROJECT**

7
8 **THIS REIMBURSEMENT AGREEMENT**, hereinafter AGREEMENT, is entered
9 into on this 1st day of February, 2011, by and between the Redevelopment
10 Agency for the County of Riverside, a public body corporate and politic in the State of
11 California, hereinafter AGENCY, and the County of Riverside, by and through its
12 Transportation Department, hereinafter COUNTY, hereinafter collectively referred to as
13 the Parties, for the design and construction of the Airport Boulevard Railroad Grade
14 Separation Improvement Project.

15 **WITNESSETH**

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

20 **WHEREAS**, the COUNTY has adopted by Ordinance No. 638 on December 22,
21 1986, a redevelopment plan for an area within the COUNTY known as the Desert
22 Communities Project Area (hereinafter "PROJECT AREA");

23 **WHEREAS**, the Redevelopment Plan (hereinafter PLAN) was adopted in order
24 to eliminate blight and revitalize the substandard physical and economic conditions
25 that exist within the PROJECT AREA, which is composed of several non-contiguous
26 sub areas, including the Thermal Sub Area, hereinafter the Sub-Area;

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

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

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

14 **WHEREAS**, AGENCY and the COUNTY have determined that there is a great
15 need to grade separate the current at-grade crossing of the Airport Boulevard with the
16 Union Pacific Railroad (UPRR) within the unincorporated community of Thermal
17 (hereinafter the "PROJECT");

18 **WHEREAS**, the PROJECT will benefit the PROJECT AREA and community by
19 improving vehicular traffic circulation, public safety, and provide uninterrupted and
20 efficient access for motorists, residents, businesses, pedestrians and emergency
21 vehicles within the PROJECT AREA and meets a primary objective of the PLAN;

22 **WHEREAS**, the Project is consistent with the PLAN and the AGENCY's current
23 PROJECT AREA Implementation Plan; and

24 **WHEREAS**, the AGENCY agrees to reimburse the COUNTY for design and
25 construction costs associated with the PROJECT and COUNTY agrees to undertake
26 PROJECT;

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

1 **SECTION 1. Purpose of AGREEMENT.** The purpose of this AGREEMENT is
2 to set forth the terms and conditions by which AGENCY will reimburse COUNTY for
3 COUNTY'S actual costs associated with the design and construction of the PROJECT.

4 **SECTION 2. Location of the Project.** The PROJECT is located on Airport
5 Boulevard (56th Ave) from Polk Street to westerly of the Coachella Valley Storm
6 Channel in the unincorporated Community of Thermal, as more specifically detailed in
7 Exhibit A, which is attached hereto and made a part hereof by this reference.

8 **SECTION 3. Scope of Work.** The work to be performed by the COUNTY
9 includes design and construction services for the grade separation of the current at-
10 grade crossing of the Airport Boulevard with the Union Pacific Railroad (UPRR), as
11 outlined in Exhibit B, which is attached hereto and made a part hereof by this reference.

12 **SECTION 4. Construction of the Project.** The contractor(s) for the Project are
13 to be selected by COUNTY. COUNTY shall cause the construction of the Project to be
14 carried out in compliance with all applicable laws, including, but not limited to, all
15 applicable federal and state and local environmental, occupational, safety and health
16 standards; nondiscrimination requirements; accessibility for the disabled; and prevailing
17 wage laws.

18 **SECTION 5. Permits.** COUNTY agrees to obtain, secure or cause to be
19 secured any and all permits and/or clearances which may be required by COUNTY or
20 any other federal, state or local governmental or regulatory agency relating to the
21 Project.

22 **SECTION 6. Time Limit.** COUNTY shall complete the work that is the subject
23 of this AGREEMENT within a period of forty eight (48) months after the date of
24 execution of this AGREEMENT. In the event said forty eight (48) month period expires
25 prior to the completion of the work, the terms of this AGREEMENT may be extended
26 upon written consent of Parties. Nothing in this Section shall be deemed a waiver of
27 any or all claims or other actions by either party in regard to any breach of this
28 AGREEMENT.

1 **SECTION 7. Payment.** AGENCY shall reimburse COUNTY for the actual cost
2 of the improvements for an amount not to exceed Four Million (\$4,000,000) dollars
3 which shall constitute the full and complete financial obligation of the AGENCY. Said
4 amount shall include, but is not limited to, all of COUNTY's charges to design and
5 construct the project.

6 COUNTY shall invoice AGENCY monthly or quarterly for the work performed
7 during the prior billing period and submit documentation to verify reimbursable
8 expenditures by COUNTY. A written project status report shall also be included with
9 each invoice. Said status report shall provide a description of the work completed that
10 AGENCY is being billed for and indicate the percentage of the project which is
11 completed. The final invoice shall be received by AGENCY within 12 months of
12 completion of the construction of the project. After said 12 month period, AGENCY will
13 reprogram any remaining funds.

14 **SECTION 8. Principal Contact Persons.** The following individuals are hereby
15 designated to be the principal contact persons for their respective parties:

16
17 **AGENCY:** Joaquin Tijerina, Project Manager
18 Redevelopment Agency for the County of Riverside
19 44-199 Monroe St., Suite B, Indio, CA 92201
20 (760) 863-2529

21
22
23 **COUNTY:** Scott Staley, Project Manager
24 Riverside County Transportation Department
25 4080 Lemon Street, 8th Floor, Riverside, CA 92501
26 (951) 955-2092

27
28 **SECTION 9. Conflict of Interest.** No member, official or employee of AGENCY

1 or COUNTY shall have any personal interest, direct or indirect, in this AGREEMENT nor
2 shall any such member, official or employee participate in any decision relating to this
3 AGREEMENT which affects his or her personal interests or the interests of any
4 corporation, partnership or association in which he or she is directly or indirectly
5 interested.

6 **SECTION 10. Interpretation and Governing Law.** This AGREEMENT
7 and any dispute arising there under shall be governed and interpreted in accordance
8 with the laws of the State of California. This AGREEMENT shall be construed as a
9 whole according to its fair language and common meaning to achieve the objectives
10 and purposes of the Parties hereto, and the rule of construction to the effect that
11 ambiguities are to be resolved against the drafting party shall not be employed in
12 interpreting this AGREEMENT, all parties having been represented by counsel in the
13 negotiation and preparation hereof.

14 **SECTION 11. No Third Party Beneficiaries.** This AGREEMENT is made and
15 entered into for the sole protection and benefit of the Parties hereto. No other person or
16 entity shall have any right of action based upon the provisions of this AGREEMENT.

17 **SECTION 12. Indemnification.** Except as to any legal challenge or claim
18 brought by any person or entity questioning the use of redevelopment funds for the
19 purposes set forth herein that is the subject of this AGREEMENT:

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

26 (ii) AGENCY shall indemnify and hold COUNTY, its officers, agents, or
27 employees free and harmless from any person or entity not a party to this
28 AGREEMENT from any damage, loss or injury to person and/or property which primarily

1 relates to or arises from the negligence or willful misconduct of AGENCY, its elected
2 officials, officers, directors, affiliates, agents, or employees in the execution or
3 implementation of this AGREEMENT.

4 **SECTION 13. Insurance.** COUNTY shall cause COUNTY's
5 Contractor/Consultant to maintain in force, until completion and acceptance of the
6 PROJECT, a policy of Contractual Liability Insurance, including coverage of Bodily
7 Injury Liability and Property Damage Liability, in the amount of \$2,000,000 minimum
8 single limit coverage, and a policy of Automobile Liability Insurance in the amount of
9 \$1,000,000 minimum. Endorsements to each policy shall be required which name the
10 AGENCY, its officers, directors, officials, agents and employees as additionally insured.
11 COUNTY shall also require COUNTY's Contractors/Consultant to maintain Worker's
12 Compensation Insurance. COUNTY shall provide Certificates of Insurance and
13 Additional Insured Endorsements which meet the requirements of this section to
14 AGENCY upon request.

15 **SECTION 14. Section Headings.** The Section headings herein are for the
16 convenience of the Parties only and shall not be deemed to govern, limit, modify or in
17 any manner affect the scope, meaning or intent of the provisions or language of this
18 AGREEMENT.

19 **SECTION 15. Project Sign.** COUNTY agrees that AGENCY may place a
20 project sign at the project site identifying the AGENCY as a funding source for the road
21 improvement project.

22 **SECTION 16. Entire Agreement.** This AGREEMENT is intended by the Parties
23 hereto as a final expression of their understanding with respect to the subject matter
24 hereof and as a complete and exclusive statement of the terms and conditions thereof
25 and supersedes any and all prior and contemporaneous agreements and
26 understandings, oral or written, in connection therewith. Any amounts to or clarification
27 necessary to this AGREEMENT shall be in writing and acknowledged by all Parties to
28 the AGREEMENT.

1 **SECTION 17. Amendments and Modifications.** It is agreed that the rights,
2 interests, understandings, agreements and obligations of the respective parties
3 pertaining to the subject matter of this AGREEMENT may not be amended, modified or
4 supplemented in any respect except by a subsequent written instrument evidencing the
5 express written consent of each of the parties hereto and duly executed by the Parties.
6

7 **SECTION 18. Successors and Assigns.** This AGREEMENT shall inure to the
8 benefit of, and be binding upon, the successors, executors, administrators, legal
9 representatives and assigns of the Parties hereto.

10 **SECTION 19. Termination.** This AGREEMENT may be terminated upon any of
11 the following events:

12 i) By either AGENCY or COUNTY if the other party breaches any of the
13 material terms of this AGREEMENT, which default is not cured within thirty (30) days
14 following written notice of such default of the defaulting party. If the default is not cured
15 within the thirty (30) day period, the non-defaulting party may terminate this
16 AGREEMENT by giving notice of its decision to do so.
17

18 ii) In the event that either party becomes insolvent; makes an assignment
19 for the benefit of creditors; becomes the subject of any bankruptcy, reorganization or
20 arrangement proceeding or defaults in any obligation, which default would foreclose
21 such party from exercising its right or prevent it from paying its obligations hereunder,
22 then such action shall be a default hereunder and this AGREEMENT may be terminated
23 by written notice to the defaulting party.
24

25 iii) By either AGENCY or COUNTY for its convenience and without cause
26 upon thirty (30) days written notice to the other party.
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28

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

3 **SECTION 20. Remedies.** In the event AGENCY terminates this AGREEMENT
4 under Section 19 (iii) above, AGENCY shall not be entitled to any reimbursement of
5 funds either expended by AGENCY pursuant to this AGREEMENT or paid to COUNTY
6 pursuant to Section 5, above.
7

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

11 In the event AGENCY terminates this AGREEMENT for COUNTY's failure to
12 perform in accordance with Section 3 above, AGENCY shall be entitled to deny
13 reimbursement to COUNTY for uncompleted tasks as outlined in Section 3 above,
14 unless COUNTY's failure is a result of the following:
15

16 i) AGENCY breach.

17 ii) Acts of God, fires, accidents or other occurrences beyond the reasonable
18 control of COUNTY (whether like or unlike any of these enumerated herein).
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1 **IN WITNESS WHEREOF**, AGENCY and COUNTY have executed this
2 AGREEMENT as of the date first above written.

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4 **REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE**
5 **COUNTY OF RIVERSIDE**

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9 Bob Buster, Chairman
10 Board of Directors

Bob Buster, Chairman
Board of Supervisors

11
12
13 **ATTEST:**

14 Kecia Harper-Ihem, Clerk of the Board

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16
17 BY: 

18 Deputy

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21 **APPROVED AS TO FORM:**

22 Pamela J. Walls, County Counsel

23
24
25 BY: 

26 Deputy

EXHIBIT A
LOCATION OF PROJECT

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EXHIBIT B

SCOPE OF WORK

Project description: The Project includes design, construction and related services for the grade separation of the current at-grade crossing of Airport Boulevard with the Union Pacific Railroad. County will oversee and/or perform the following tasks associated with the Project for the cost shown:

Design	\$500,000.00
Acquisition of Right of Way	\$1,000,000.00
Construction	\$2,500,000.00
TOTAL	\$4,000,000.00