

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

*449
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FROM: TLMA - Transportation Department

SUBMITTAL DATE:
April 21, 2011

SUBJECT: Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit Agreement with Starfield Sycamore Investors, LLC for Indian Truck Trail / I-15 Interchange improvements associated with Tracts 31908, 36316, and 36317.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the subject TUMF Improvement and Credit Agreement between the County and Starfield Sycamore Investors, LLC; and
2. Authorize the the Chairman to execute the same.

BACKGROUND: This Agreement provides a means by which eligible costs for delivery of certain road improvements by Starfield Sycamore Investors, LLC (Developer) are offset against the Developer's obligation to pay the applicable TUMF. The improvements include widening of

Juan C. Perez
Director of Transportation

JCP:gh
(Continued On Attached Page)

FORM APPROVED COUNTY COUNSEL
BY: *Walter R. Gardner* DATE: *4/29/11*
DALE A. GARDNER
Departmental Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	NA
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	NA

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit 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: May 3, 2011
xc: Transp.

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

Dept's Recomm.: Policy Consent
Per Exec. Ofc.: Policy Consent

Prev. Agn. Ref. | District: 1 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.49

The Honorable Board of Supervisors

RE: Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit Agreement with Starfield Sycamore Investors, LLC for Indian Truck Trail / I-15 Interchange improvements associated with Tracts 31908, 36316, and 36317.

April 21, 2011

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Indian Truck Trail from two to four lanes with dedicated right and left-turn lanes between Interstate 15 and Temescal Canyon Road, and widening and signalization of the freeway interchange ramps. These road improvements are listed as TUMF network facilities and are required by conditions of approval for the Tracts.

Construction of this project is anticipated to begin in the Fall of 2011.

As of the date of this Agreement, the Developer's estimated TUMF obligation for the Tracts is approximately \$2,404,854. The Transportation Department has determined that the Developer would be eligible for an initial credit of \$2,404,854 from the TUMF Program. Upon completion of improvements, acceptance by the County, and verification of actual costs, the Transportation Department will determine the actual credit amount and, if applicable, reimbursement amount due to the Developer.

There are two companion items on this same Board Agenda:

- 1) Cooperative Agreement with Starfield Sycamore Investors, LLC for the Indian Truck Trail / I-15 Interchange.
- 2) Amendment #1 to the Joint Community Facilities Agreement (JCFA) by Lee Lake Water District and Starfield Sycamore Investors, LLC for Indian Truck Trail / I-15 Interchange.

Project Number: B40501

**IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This **IMPROVEMENT AND CREDIT AGREEMENT** ("Agreement") is entered into this 31st day of May, 2011, by and between the County of Riverside, a subdivision of the State of California ("County"), and Starfield Sycamore Investors, LLC, a Delaware limited liability company, with its principal place of business at 100 Pine Street, Suite 3000, San Francisco, California 94111 ("Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Developer owns approximately 200 acres of real property located within the County of Riverside, California, which is more specifically described in the legal description set forth in Exhibit "A", attached hereto and incorporated herein by this reference ("Property");

WHEREAS, Developer has requested from County certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as Tract Nos. 31908, 31908-1, 31908-2, 36316, and 36317 ("Project");

WHEREAS, the County is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and 16 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee ("TUMF") Program;

WHEREAS, as part of the TUMF Program, the County has adopted "Transportation Uniform Mitigation Fee Nexus Study: 2009 Update" ("2009 Nexus Study") and the "Addendum 1 – Temporary Fee Reduction ("Addendum");

WHEREAS, as a condition to County's approval of the Project, County has required Developer to construct certain street and transportation system improvement(s) of regional importance generally described as Indian Truck Trail/Interstate 15 Interchange ramp signalization and widening, Indian Truck Trail (I-15 to Temescal Canyon Road) widening, and Indian Truck Trail at Temescal Canyon Road intersection improvements, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by County, and which are incorporated herein by this reference ("TUMF Improvements");

WHEREAS, pursuant to the TUMF Program, the County requires Developer to pay the TUMF which covers the Developer's fair share of the costs to deliver those TUMF Improvements that help mitigate the Project's traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the "TUMF Network"), generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the TUMF Network;

WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2009 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, since the TUMF Improvements consists of an interchange modification of such scope and costs that is beyond Developer's ability to construct directly under a Caltrans encroachment permit, and which requires construction contract oversight by a public agency, the County has agreed to construct the TUMF Improvements and meet Developer's obligation to construct pursuant to a separate Cooperative Agreement attached for reference as Exhibit "I";

WHEREAS, the Parties have agreed to assign certain construction related responsibilities under this Agreement from the Developer to the County, which are more specifically defined by the assignment of the following sections herein: Sections 2.0 (except first sentence), 2.1, 2.2, 2.3, 2.3(a)(b)(c)(d), the second sentence of 2.4, 2.5, 2.6, and 5.0;

WHEREAS, County and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the County, (3) to provide a means by which the Developer's costs for project delivery of the TUMF Improvements and related right-of-ways is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and County hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of TUMF Improvements. Developer shall plan and design the TUMF Improvements and provide a portion of the funds, as reflected in Exhibit "H" (the "Developer's Contribution"). Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as Indian Truck Trail/Interstate 15 Interchange ramp signalization and widening, Indian Truck Trail (I-15 to Temescal Canyon Road) widening, and Indian Truck Trail at Temescal Canyon Road intersection improvements, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by County, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private

improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of County and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing construction work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by County. Approval by County shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any construction work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of County, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of County with respect to its public works projects, or in a manner which is approved by the Transportation Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of counties and as required by the procedures and standards of County with respect to the construction of its public works projects or as otherwise directed by the Transportation Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with County's standard procedures and requirements.

2.4 Quality of Work; Compliance with Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with County, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by County. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. County shall be responsible for the maintenance and care of the TUMF Improvements during construction.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the Developer's Contribution to the TUMF Improvements, including, but not limited to, all plan check, design review, and other service or impact fees established by County.

5.0 County Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by County of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 3115 and 3116 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to County, if applicable, such evidence or proof as County shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the performance of the Developer's Contribution to the TUMF

Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to County, if applicable, a title insurance policy or other security acceptable to County guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed and approved by County, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, County shall be authorized to accept the TUMF Improvements. County may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete. Upon the total or partial acceptance of the TUMF Improvements by County, County shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code section 3093 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of County without any payment therefore. Notwithstanding the foregoing, County may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the County for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. County shall require the construction contractor to warrant and guarantee all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by County ("Warranty").

9.0 Administrative Costs. If Developer fails to fund the Developer's Contribution to the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to County for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if County determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement by Developer, County may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, County may provide the Notice verbally, and Developer shall substantially commence the required work to remedy the default or violation within twenty-four (24) hours thereof.

Immediately upon County's issuance of the Notice, Developer and its surety shall be liable to County for all costs of the Developer's Contribution to the TUMF Improvements and all other administrative costs expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; County Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to County within the time frame contained in the Notice, County may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. County's right to take such actions shall in no way be limited by the fact that Developer or its surety may have completed any of the Developer's Contribution to the TUMF Improvements at the time of County's demand for performance. In the event County elects to complete or arrange for completion of the remaining work relating to the Developer's Contribution to the TUMF Improvements, County may require all work by Developer or its surety to cease in order to allow adequate coordination by County.

10.3 Other Remedies. No action by County pursuant to this Section 10.0 *et seq.* of this Agreement shall prohibit County from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. County may exercise its rights and remedies independently or cumulatively, and County may pursue inconsistent remedies. County may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. (Not Applicable)

11.1 Performance Bond. (Not Applicable)

11.2 Labor & Material Bond. (Not Applicable)

11.3 Additional Requirements. (Not Applicable)

11.4 Evidence and Incorporation of Security. (Not Applicable)

12.0 Indemnification. Developer shall defend; indemnify, and hold harmless County, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of County, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of County as determined by a court or administrative body of competent jurisdiction.

Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by County, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name County, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to County, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering County, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against County in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish County with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by County before applicable work pursuant to this Agreement can begin. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance until the filing of a Notice of Completion for the TUMF Improvements and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to County.

13.7 Insurer Rating. Unless approved in writing by County, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the estimated amount Developer is obligated to pay to County pursuant to County Ordinance No. 824 as part of the TUMF Program is Two million four hundred four thousand eight hundred fifty four dollars (\$2,404,854) ("TUMF Obligation"). This TUMF Obligation shall be initially determined under the nexus study and fee schedule in effect for the County at the time the Developer submits a building permit application within the Project. Notwithstanding, the TUMF does not have to be paid until the Certificate of Occupancy is obtained or upon final inspection, whichever occurs first.

14.2 Limited Period of Adjustment. For those participating jurisdictions in WRCOG that have adopted the Addendum to the 2009 Nexus Study, the Developer may still qualify for a pro-rata adjustment of the Maximum TUMF Share (as defined in the 2009 Nexus Study) for the TUMF Improvements if existing or future phases of the TUMF Improvements are completed under a different nexus study and the Developer pays the full TUMF required under the 2009 Nexus Study. Developer may also request to pay the full TUMF under the 2009 Nexus Study if TUMF Improvements started under the Addendum will be completed under a different nexus study. To make either request, the Developer must submit its Amendment No. 1 to this Agreement ("Amendment") attached as Exhibit "G" before WRCOG adopts the following year's Construction Cost Index in February. If the Developer fails to submit an Amendment before

February of the following year, the TUMF as would be otherwise calculated under the Addendum shall remain in effect.

14.3 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop County from adjusting the TUMF in accordance with the provisions of County Ordinance No. 824. If Section 14.2 is not applicable, Developer agrees and acknowledges that Developer's actual TUMF payment shall be calculated based on the TUMF in effect when a building permit application within the Project is submitted and in accordance with the provisions of County Ordinance No. 824 in effect at such time.

14.4 Credit Offset against TUMF Obligation. Pursuant to County Ordinance No. 824 and in consideration for Developer's obligation under this Agreement for the Developer's Contribution to the delivery of TUMF Improvements, credit shall be applied by County to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.2 and 14.6 of this agreement. Developer hereby agrees that the amount of the Credit shall be applicable after County has awarded the construction contract for the TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder plus other Project delivery related cost, or (B) the unit cost assumptions for the TUMF Improvements in effect at the time of the construction contract award, as such assumptions are identified and determined in the 2009 Nexus Study or the Addendum (if the jurisdiction is participating in the TUMF reduction) and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions"), or (C) the eligible costs for Developer's Contribution to the TUMF Improvements ("Eligible Expenses").

The lesser of the bid amount, the Unit Cost Assumptions, or Eligible Expenses shall hereafter be collectively referred to as "Estimated Cost". At no time will the Credit exceed the Developer's TUMF Obligation. If the dollar amount of the Estimated Cost exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.7 of this Agreement. If the dollar amount of the Estimated Cost is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(1) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by County pursuant to this section.

(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by County pursuant to this section.

County shall provide Developer written notice of the determinations that County makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above. County's initial determinations pursuant to this section are set forth in attached Exhibit "H".

14.5 Verified Cost of the Eligible Expenses. Not later than recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by County, Developer shall submit to the County Director of Transportation, or his or her designee, the applicable information set forth in the attached Exhibit "C" with respect to the Developer's Eligible Expenses. The County Director of Transportation, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer for the Eligible Expenses in delivering the TUMF Improvements covered under this Agreement ("Verified Costs"). The County Director of Transportation will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.6 Reconciliation; Final Credit Offset against TUMF Obligation. The Developer is aware and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by County to offset the actual remaining TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) the Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.4 of this Agreement ("Actual Credit"). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the actual remaining TUMF Obligation ("TUMF Balance"), the County Director of Transportation shall provide written notice to Developer of the amount of the TUMF Balance and Developer shall pay the TUMF Balance in accordance with County Ordinance No. 824 to fully satisfy the actual TUMF Obligation (see Exhibit "F", Example A).

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.7 of this Agreement. County shall provide Developer written notice of the determinations that County makes pursuant to this section (see Exhibit "F", Example "B").

(c) TUMF Overpayment. If the dollar amount of the Actual Credit plus additional monies collected by County from Developer for the TUMF Obligation exceeds the TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The County Director of Transportation shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and WRCOG shall refund the Developer in accordance with County Ordinance No. 824 (see Exhibit "F", Example C).

14.7 Reimbursement Agreement. If authorized under either Section 14.4 or Section 14.6, Developer may apply to County and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Sections 14.4 and 14.6 of this Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If County and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to County such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with County in a form reasonably acceptable to County, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between County and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of County.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, County shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To County: County of Riverside
Transportation Department
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Mr. Juan C. Perez
Director of Transportation
Phone (951) 955-6740
Fax (951) 955-3198

To Developer: Starfield Sycamore Investors, LLC
100 Pine Street, Suite 3000
San Francisco, CA 94111
Attn: Dan Schwaegler

And: Starfield Sycamore Investors, LLC
c/o Foremost Communities
2151 Michelson Drive, Suite 250
Irvine, CA 92612
Attn: Mr. Steve Cameron
Phone (949) 748-6714
Fax (949) 861-3333

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to County include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

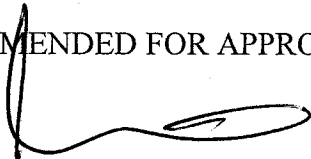
15.16 Entire Agreement. This Agreement contains the entire agreement between County and Developer and supersedes any prior oral or written statements or agreements between County and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By:  _____

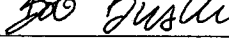
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By:  _____
Date: A. Gardner

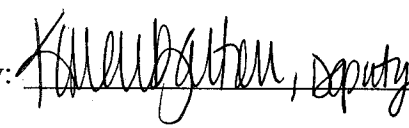
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By:  _____ Date: MAY 03 2011

BOB BUSTER
Chairman, County Board of Supervisors

ATTEST:

By:  _____ Date: MAY 03 2011

Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

Starfield Sycamore Investors, LLC, a Delaware limited liability company

By: SOF-VI Sycamore Creek Holdings, LLC
a Delaware limited liability company,
its Manager

By: _____

Daniel Schwaegler, Vice President

By: _____

Printed Name

Title

MAY 03 2011 3,49

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: _____
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By: _____
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: _____ Date: _____
Chairman, County Board of Supervisors

ATTEST:

By: _____ Date: _____
Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

Starfield Sycamore Investors, LLC, a Delaware limited liability company

By: SOF-VI Sycamore Creek Holdings, LLC
a Delaware limited liability company,
its Manager

By: Daniel Schwaegler
Daniel Schwaegler, Vice President

State of California County of San Francisco
Subscribed and sworn to (or affirmed) before me: on
this 7 day of April, 2011, by: Daniel Schwaegler
proved to me on the basis of satisfactory evidence to be
the person(s) who appeared before me.
(Seal) Signature Diana Polyakov



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[ATTACHED BEHIND THIS PAGE]

SYCAMORE CREEK TUMF CREDIT AGREEMENT LEGAL DESCRIPTIONS

As of March 31, 2011

Tentative Tract Map 31908-1

(Planning Area 15A)

PARCEL 3, OF PARCEL MAP NO. 34609, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 224 PAGES 45 THROUGH 49, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(APN: 290-660-007-6)

Tentative Tract Map 31908-2

(Planning Area 14)

PARCEL 4, OF PARCEL MAP NO. 34609, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 224 PAGES 45 THROUGH 49, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(APN: 290-660-008-7 and 290-660-009-8)

Tentative Tract Map 31908

(Planning Area 15B)

PARCEL 2, OF PARCEL MAP NO. 34609, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 224 PAGES 45 THROUGH 49, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(APN: 290-660-006-5)

Tentative Tract Map 36316

(Planning Area 7/9)

(unapproved)

PARCEL "A" AS SHOWN AND DESCRIBED ON NOTICE OF LOT LINE ADJUSTMENT NO. 5220 RECORDED MARCH 27, 2009 AS INSTRUMENT NO. 2009-0151236 OF OFFICIAL RECORDS, BEING A PORTION OF SECTION 12, TOWNSHIP 5 SOUTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

(APN: 290-670-001-1)

Tentative Tract Map 36317

(Planning Area 17A-17D)

(unapproved)

PARCEL 1, OF PARCEL MAP NO. 34609, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 224 PAGES 45 THROUGH 49, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. EXCEPTING THEREFROM THAT PORTION OF PARCEL 1 AS CONVEYED TO LEE LAKE WATER DISTRICT BY A GRANT DEED RECORDED OCTOBER 28, 2009 AS INSTRUMENT NO. 2009-0555848 OF OFFICIAL RECORDS, RIVERSIDE COUNTY CALIFORNIA.

(APN'S: 290-660-002-1 AND 290-660-003-2 AND 290-660-005-4 AND 290-660-012)

PORTION OF PARCEL "D" AS SHOWN AND DESCRIBED ON NOTICE OF LOT LINE ADJUSTMENT NO. 4944 RECORDED NOVEMBER 28, 2005 AS INSTRUMENT NO. 2005-0978074 OF OFFICIAL RECORDS, BEING PORTIONS OF SECTIONS 12 AND 13, TOWNSHIP 5 SOUTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA. EXCEPTING THEREFROM THAT PORTION CONVEYED TO LEE LAKE WATER DISTRICT BY DEED RECORDED JANUARY 8, 2004 AS INSTRUMENT NO. 2004-0011723 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF RIVERSIDE, A POLITICAL SUBDIVISION, ON BEHALF OF COUNTY SERVICE AREA NO. 134 BY DEED RECORDED NOVEMBER 06, 2007 AS INSTRUMENT NO. 2007-0675974 OF OFFICIAL RECORDS. ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL MAP 34609 RECORDED FEBRUARY 5, 2008 AS INSTRUMENT NO. 2008-0056278 OF OFFICIAL RECORDS.

(APN'S: 290-670-006-6 AND 290-670-007-7)

Sycamore Creek TUMF Credit Agreement Development Exhibit

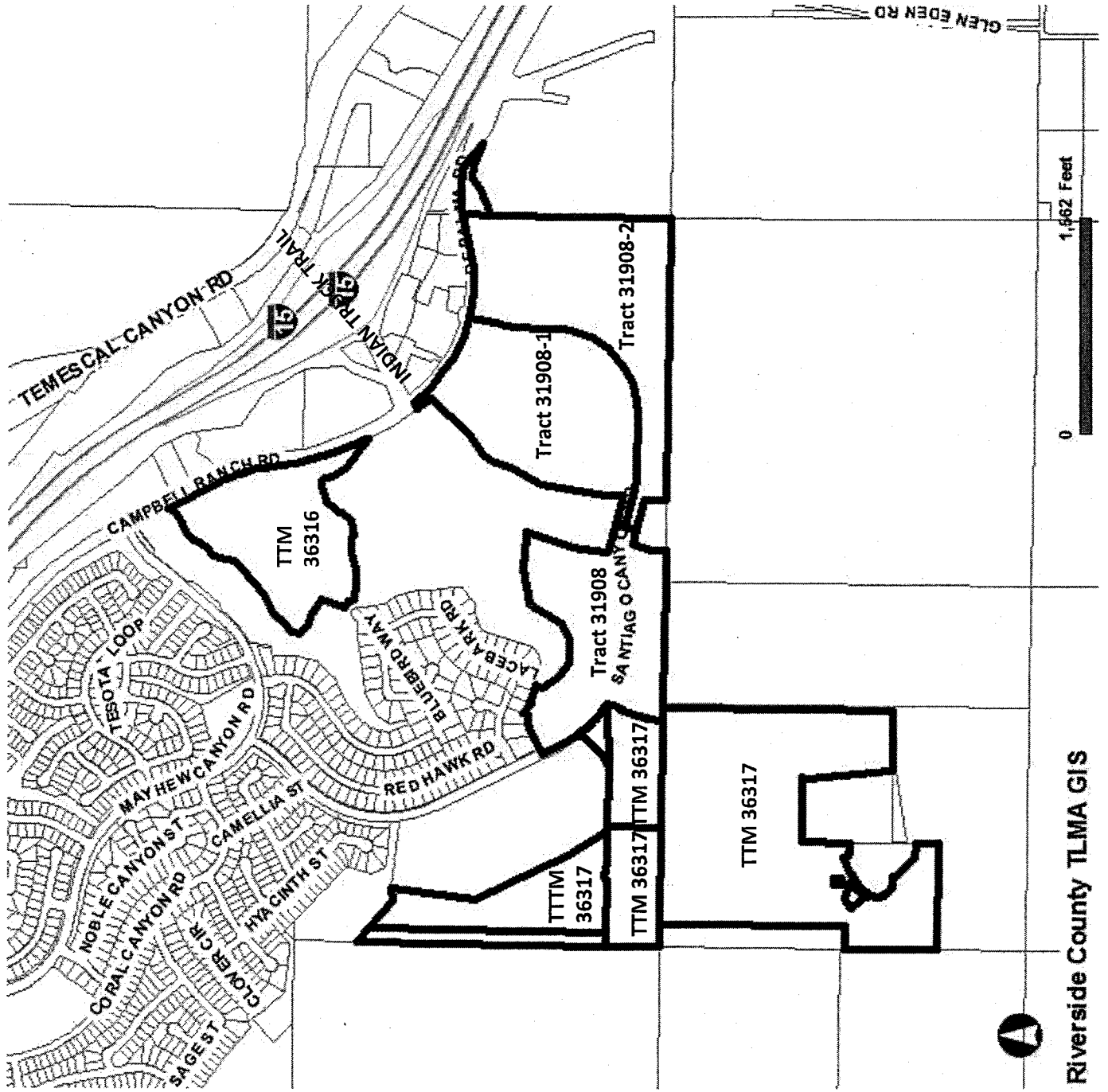


EXHIBIT "B"

FORMS FOR SECURITY

(Not Applicable)

EXHIBIT "C"

DOCUMENTATION TO BE PROVIDED TO COUNTY BY DEVELOPER FOR DETERMINATION OF APPLICABLE COSTS

To assist County in determining the costs of the Developer's Contribution to the TUMF Improvements, Developer shall provide the following documents to County:

1. Plans, specifications and Developer's civil engineer's cost estimate;
2. Contracts, insurance certificates and change orders with each contractor or vendor;
3. Invoices received from all vendors;
4. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
5. Spreadsheet showing total costs incurred in and related to the Developer's Contribution to the TUMF Improvements and the check number for each item of cost and invoice;
6. Final lien releases from each contractor and vendor; and
7. Such further documentation as may be reasonably required by County to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT "D"

REIMBURSEMENT AGREEMENT TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

THIS REIMBURSEMENT AGREEMENT ("Agreement") is executed this ____ day of _____, 20__, by and between the County of Riverside, a subdivision of the State of California ("County"), and Starfield Sycamore Investors, LLC, a Delaware limited liability company with its principal place of business at 100 Pine Street, Suite 3000, San Francisco, California 94111 ("Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, County and Developer are parties to an agreement dated _____, 20__, entitled "Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.4 of the Credit Agreement provide that Developer is obligated to pay County the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs or have constructed and County accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.6(b) of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to County and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.7 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, County has consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. County and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). WRCOG shall pay the Reimbursement Amount to County and the County shall be responsible for transmitting the Reimbursement Agreement to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.4, 14.5, and 14.6 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by County in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement Amount is made to Developer by WRCOG through County.

6.0 Affirmation of Credit Agreement. County and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. County and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. County and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

7.0 Incorporation into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit "D" to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.7, and Sections 15.0 through 15.16.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: _____
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By: _____
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: _____ Date: _____
Chairman, County Board of Supervisors

ATTEST:

By: _____ Date: _____
Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

Starfield Sycamore Investors, LLC

By: _____

Printed Name

Title

By: _____

Printed Name

Title

EXHIBIT "E"

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

(Not Applicable)

EXHIBIT "F"

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units:
200 SF dwelling units @ \$6,650 / dwelling unit = \$1,330,000 in fees (TUMF Obligation)

Example A: TUMF BALANCE

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less:	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)
RECONCILIATION	
TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,200,000</u>
TUMF Balance (Payment to TUMF):	<u>\$130,000</u>

Example B: REIMBURSEMENT

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less:	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)
RECONCILIATION	
TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,500,000</u>
Reimbursement Agreement with Developer (Based on Priority Ranking):	<u>(\$170,000)</u>

Example C: TUMF OVERPAYMENT

CREDIT	
TUMF Obligation:	\$1,330,000
Estimated Cost: Bid (\$1,200,000) or unit Cost Assumption (\$1,500,000) whichever is less:	<u>\$1,200,000</u>
Remaining TUMF Obligation:	\$130,000
Prorated Fee: \$130,000 / 200 du =	\$650 / du
RECONCILIATION	
Actual Credit:	\$1,300,000
TUMF payments from Developer (\$650 per unit x 200 units):	<u>\$130,000</u>
Actual Credit plus TUMF Payment:	<u>\$1,430,000</u>
TUMF Obligation:	\$1,330,000
Actual Credit plus TUMF Payment:	<u>\$1,430,000</u>
TUMF Overpayment (Refund to Developer):	<u>(\$100,000)</u>

EXHIBIT "G"

MODEL AMENDMENT

[ATTACHED BEHIND THIS PAGE]

**AMENDMENT NO. 1
TO THE IMPROVEMENT AND CREDIT AGREEMENT
BETWEEN THE COUNTY OF RIVERSIDE
AND **[**ENTER NAME OF DEVELOPER**]****

1. Parties and Date.

This **AMENDMENT NO. 1** to the **IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT** ("Amendment") is entered into as of this ____ day of _____, 20__, by and between the County of Riverside, a subdivision of the State ("County"), and _____, a California **[**INSERT TYPE OF ENTITY - a corporation, a partnership, a sole proprietorship or other legal entity**]**, with its principal place of business at **[**ENTER ADDRESS**]** ("Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

2. Recitals.

2.1 Agreement. The County and Developer entered into the **IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT** ("Agreement") dated _____, 20__ as it relates to the construction of improvements on the Property located at _____ ("Project"). As a condition of the County's approval of the Project, the County has required Developer to construct certain street and transportation improvements of regional importance ("TUMF Improvements").

2.2 Amendment Purpose. As the County is one of the participating jurisdictions in the TUMF Program that adopted both the "Transportation Uniform Mitigation Fee Nexus Study: 2009 Update" ("2009 Nexus Study") and the "Addendum 1 – Temporary Fee Reduction" ("Addendum"), and given that the Addendum has expired, this Amendment shall allow the Developer to amend its TUMF Obligation during a limited period of adjustment as discussed in Section 3.3 below. In addition, a Developer who is presently constructing his/her Project in phases may obtain a pro-rata adjustment to its TUMF Obligation if an existing or future phase(s) of the Project shall occur under a different nexus study.

2.3 TUMF Improvements. The TUMF Improvements are generally described as _____

2.4 Amendment Authority. This Amendment is authorized pursuant to Section 15.8 of the Agreement.

3. Terms.

3.1 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

3.2 Developer's TUMF Obligation. Section 14.1 of the Agreement is hereby replaced in its entirety and shall now provide as follows:

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Amendment, the amount Developer is obligated to pay to County pursuant to County Ordinance No. 824 the full or pro-rata share (if phases are involved) of the Transportation Uniform Mitigation Fee (TUMF) as maybe required for the Project in the amount of _____ (\$ _____) ("TUMF Obligation") as determined by the fee schedule and the TUMF Nexus Study 2009 Update which is now in effect since the aforementioned Agreement was originally executed by both Parties.

3.3 Limited Period of Adjustment. Section 14.2 of the Agreement is hereby replaced in its entirety and shall now provide as follows:

14.2 Limited Period of Adjustment. The Developer submits this Amendment in order to obtain a higher Maximum TUMF Share given that the Developer has agreed to pay the full TUMF Obligation as required under the 2009 Nexus Study and this Amendment is submitted before WRCOG's adoption of the following year's Construction Cost Index ("CCI") in February of each year for the duration of the policy reduction. Developer understands that the failure to submit an Amendment before the CCI is adopted shall mean that the original TUMF Obligation calculated under the original Agreement shall control and the Developer will be required to accept the Adjusted Maximum Share provided forth under the Addendum.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment, all other provisions of the aforementioned Agreement remain in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears, it shall mean the Agreement as amended by this Amendment.

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

3.6 Terms. All terms shall follow the definitions provided in the Agreement or the TUMF Administrative Plan.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year first written above.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: _____
Juan C. Perez
Director of Transportation

APPROVED AS TO FORM:

By: _____
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By: _____ Date: _____
Chairman, County Board of Supervisors

ATTEST:

By: _____ Date: _____
Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

[Developer Name]

By: _____

Printed Name

Title

By: _____

Printed Name

Title

EXHIBIT "H"

Estimated TUMF Credit / Reimbursement Summary

Starfield Sycamore Investors, LLC
 (Tract Nos. 31908, 31908-1, 31908-2, 36316, and 36317)

List of eligible streets/facilities under the TUMF Network:

Indian Truck Trail (Temescal Canyon to I-15)
 Indian Truck Trail/I-15 Interchange

TUMF Credit Cost Factors:

Estimated TUMF Obligation (see next page for details)	\$ 2,404,854
TUMF Unit Cost Assumptions (see next page for details)	\$ 8,100,400
Bid Amount (Estimated construction & other project delivery related costs)	\$ 9,550,000
Estimated Eligible Expenses (see below)	\$ 6,600,000

Estimated Eligible Expenses Breakdown

Lee Lake Water District CFD Bond Proceeds	\$ 4,800,000
Planning, Engineering, Geotechnical Services	\$ 1,800,000
Estimated Eligible Expenses Total	<u>\$ 6,600,000</u>

Estimated TUMF Credit:

Estimated Cost (Lesser of Bid Amount, Unit Cost Assumptions, or Eligible Expenses)	\$ 6,600,000
Estimated number of remaining units	542
Prorated Credit per each remaining unit (up to max TUMF fee per unit)	\$ 4,437
Estimated Credit to be applied to remaining units	\$2,404,854

TUMF Overpayment / Refund:

Estimated Credit amount + Paid TUMF amount	\$2,404,854
Estimated Refund (Credit + Paid TUMF amount that exceeds Obligation amount)	\$0

TUMF Reimbursement:

Estimated Cost (Lesser of Bid Amount, Unit Cost Assumptions, or Eligible Expenses)	\$ 6,600,000
Estimated TUMF Credit/Refund	(\$2,404,854)
Estimated TUMF Reimbursement (Cost exceeding Obligation amount)	\$ 4,195,146

- Notes:
1. The amounts shown in this Exhibit are subject to cost validation and reconciliation.
 2. TUMF Reimbursement related to construction costs shall be made to LLWD CFD.
 3. TUMF Reimbursement related to planning and design services shall be made to Developer.

Starfield Sycamore Investors, LLC
(Tract Nos. 31908, 31908-1, 31908-2, 36316, and 36317)

ESTIMATED TUMF OBLIGATION CALCULATION

Paid TUMF Amount	Fee per Unit	Units	Amount
Single Family Residential			\$ -
			\$ -
	Paid Subtotal	0	\$ -

Estimated Remaining Units - Unpaid TUMF Amount	Fee per Unit	Units	Amount
Single Family Residential (TR 31908, 31908-1, 31908-2)	\$ 4,437	261	\$ 1,158,057
Single Family Residential (TR 36317)	\$ 4,437	194	\$ 860,778
Single Family Residential (TR 36316)	\$ 4,437	87	\$ 386,019
	Estimated Subtotal	542	\$ 2,404,854
	Obligation Total	542	\$ 2,404,854

TUMF UNIT COST ASSUMPTION CALCULATION (2009 Costs with 50% Reduction)

TUMF Network Road Segment applicable to Proposed Improvements	Cost Item	Amount
Indian Truck Trail, Temescal Cyn to I-15		
Network Distance: 0.18 miles	Road Const	\$ 220,000
Existing Lanes: 2	ROW/Utilities	\$ 83,000
Increase in Lanes: 4	Planning (10%)	\$ 22,000
	Engring (25%)	\$ 55,000
	Conting (10%)	\$ 30,300
	Network Road Segment Cost Est	\$ 410,300
	Network Unit Cost per Lane mile	\$ 569,861
	Network Unit Cost per Lane foot	\$ 108

Road Improvement Cost Estimate (based on Network Unit Cost per Lane foot)

Lane	Construction Limits (Sta. to Sta.)	Linear Feet	Amount
3	(0.18 mi x 5,280 LF)	950.40	\$ 102,575
4	(0.18 mi x 5,280 LF)	950.40	\$ 102,575
			\$ -
			\$ -
		TUMF Subtotal	\$ 205,150

TUMF Network Interchange	Cost Item	Amount
Indian Truck Trail/I-15 Interchange		
	IC Const	\$ 5,445,000
	Planning (10%)	\$ 544,500
	Engring (25%)	\$ 1,361,250
	Conting (10%)	\$ 544,500
	TUMF Subtotal	\$ 7,895,250

TOTAL TUMF UNIT COST ASSUMPTION FOR ELIGIBLE IMPROVEMENTS	\$ 8,100,400
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EXHIBIT "I"

COOPERATIVE AGREEMENT BY AND BETWEEN

COUNTY OF RIVERSIDE

AND

STARFIELD SYCAMORE INVESTORS, LLC

FOR ROADWAY IMPROVEMENTS AT

INDIAN TRUCK TRAIL / I-15 INTERCHANGE

This Cooperative Agreement ("Agreement") entered into this _____ day of _____, 2011, by and between the County of Riverside ("County"), and Starfield Sycamore Investors, LLC ("Developer"), for the provision of certain roadway improvements at Indian Truck Trail/I-15 Interchange. County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

- A. County and Developer have determined that there is great need for roadway improvements generally described as Indian Truck Trail/Interstate 15 Interchange ramp widening and signalization, and Indian Truck Trail widening between I-15 and Temescal Canyon Road (the "Project"), as further described in Exhibit A (Scope of Work).
- B. County and Developer desire to designate County as the lead agency for the construction of the Project and County will therefore provide the administrative, technical, managerial, and support services necessary to construct the Project.
- C. Developer desires to fund a portion of the Project costs in order to satisfy Developer's conditions of approval by County for its development Tracts 31908, 36316, and 36317 as applicable to the delivery of the Project.
- D. County and Developer desire to define herein the terms and conditions under which said Project is to be administered, environmentally cleared, designed, coordinated, constructed, managed, and financed.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

SECTION 1 • COUNTY AGREES:

- 1. To fund a portion of the Project costs in the amount shown in Exhibit "B".
- 2. To deem satisfied each of the Trans Conditions of Approval (COA) for the Developer's development that are

1 solely applicable to the Project upon the execution by all parties of the JCFA Amendment (defined below),
2 which shall entitle the County to receive a maximum of **\$4,800,000** from the existing bond proceeds from Lee
3 Lake Water District (LLWD) Community Facilities District (CFD) No. 1 (the "Bond Proceeds") and upon the
4 County awarding the construction contract for the Project. In the case that a single COA contains
5 requirements related to the Project as well as requirements that relate to other areas of the Developer's
6 development, only the portion of the COA that relates to the Project will be deemed satisfied upon execution
7 of the JCFA Amendment and upon the County awarding the construction contract for the Project. Such COA
8 will be deemed fully satisfied once all of the requirements of that specific COA have been met.

- 9 3. To execute an amendment to the existing Joint Community Facilities Agreement by and among the County,
10 Developer and LLWD relating to LLWD CFD No. 1, which amendment shall provide the County the
11 unrestricted right to fund costs of the Project with the Bond Proceeds (the "JCFA Amendment").
- 12 4. To enter into a Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit/Reimbursement
13 Agreement with Developer (the "TUMF Agreement") concurrent with the execution of the JCFA Amendment
14 and this Cooperative Agreement.
- 15 5. To acquire and secure right-of-way needed for the Project.
- 16 6. To make all necessary arrangements with the owners of any existing public and/or private utility facilities for
17 their protection, relocation, or removal if in conflict with the Project construction.
- 18 7. To advertise, award and administer a public works contract for the construction of the Project in accordance
19 with the local Agency Public Construction Code and the California Labor Code.
- 20 8. To construct the Project in accordance with approved plans, specifications and estimates (PS&E) documents.
- 21 9. To furnish a representative to perform the function of Resident Engineer during construction of the Project.
22 The Resident Engineer shall be a Licensed Civil Engineer. The Resident Engineer shall also be independent
23 of the construction contractor.
- 24 10. To furnish qualified support staff to assist the Resident Engineer in, but not limited to, construction surveys,
25 soils and foundation tests, measurement and computation of quantities, testing of construction materials,
26 checking shop drawings, preparation of estimates and reports, preparation of as-built drawings, and other
27 inspection and staff services necessary to assure that the construction is performed in accordance with the
28 PS&E documents.
- 29 11. To provide material testing and quality control conforming to the Caltrans Standard Testing Methods as

1 provided in Chapter 16 of the Local Assistance Procedures Manual, and to have this testing performed by a
2 certified material tester.

3 12. To release the surety bonds previously provided by Developer solely for the Project upon approval and
4 execution of the JCFA Amendment and upon the County awarding the construction contract for the Project. If
5 the surety bonds cover more improvements than the Project, the bonds will be reduced to a level consistent
6 with the remaining conditioned improvements apart from the Project. Any reduction in surety bonds related to
7 the Project will occur after the execution of the JCFA Amendment, and upon the County awarding the
8 construction contract for the Project.

9 13. The scope of the bidding and construction support services as described in Section 2, 6 shall be minimized by
10 the County wherever possible through diligent project management.

11 **SECTION 2 • DEVELOPER AGREES:**

12 1. To fund the cost of the preparation of plans, specifications and estimates (PS&E), preparation of an
13 environmental document (ED) and obtaining environmental clearance, providing utility coordination for
14 relocation of impacted utilities, and providing support for right-of-way acquisitions, as necessary to construct
15 the Project improvements. The estimated costs for Developer's contributions are provided in Exhibit "B".

16 2. To enter into the JCFA Amendment.

17 3. To enter into the TUMF Agreement.

18 4. To prepare, or cause to be prepared, detailed PS&E and ED documents for the Project and submit to County
19 and Caltrans for review and approval at appropriate stages of development. Developer shall obtain all
20 necessary PS&E and ED approvals, including Utilities and Right of Way Certification from Caltrans and the
21 County in order to advertise the Project for construction.

22 5. To identify and locate all utility facilities within the Project area as part of its project design responsibility. If
23 any existing public and/or private utility facilities conflict with the Project construction, Developer shall work
24 with the County to make all necessary arrangements with the owners of such facilities for their protection,
25 relocation, or removal. All utility facilities shall be identified on the Project plans and specifications, and
26 conflicting utilities shall be denoted.

27 6. To provide for bid support during the construction bidding process as it relates to PS&E prepared on behalf of
28 the Project. In addition, construction support will be provided. Construction support will include the following;
29 a pre-construction meeting, shop drawing and submittal review, additional drawings as may be required in

1 support of necessary change orders (non-elective), site visits as needed, respond to inquiries/request for
2 information (RFI), change order preparation and review, and develop final record drawings based upon
3 redlines provided by the County's project Resident Engineer. Developer's costs associated with providing
4 bidding and construction support activities are an eligible construction related expense and shall be eligible
5 for reimbursement through the CFD contribution identified in Exhibit B.

6 **SECTION 3 • IT IS MUTUALLY AGREED AS FOLLOWS:**

- 7 1. The construction cost estimate for the Project is **\$5,500,000**, as shown in Exhibit "B".
- 8 2. Should the lowest responsive bid amount be less than the construction cost estimate, the County may request
9 an initial payment from LLWD CFD No. 1 that is less than the maximum Bond Proceeds amount. However,
10 the County may request additional payments from LLWD CFD No. 1, up to the maximum Bond Proceeds
11 amount to cover additional costs, such as approved change orders.
- 12 3. Should unforeseen circumstances arise, which result in a lowest responsive bid price of up to a 25% increase
13 over the construction cost estimate, County will fund this additional amount.
- 14 4. Should unforeseen circumstances arise, which result in a lowest responsive bid price of more than a 25%
15 increase over the construction cost estimate, County and Developer shall in good faith work together to find a
16 funding solution for the amount above said 25% increase. In the event County and Developer are unable to
17 arrive at a mutually acceptable funding solution within ninety (90) days following receipt of bids for
18 construction of the Project, this Agreement shall be terminated. Immediately upon termination of this
19 Agreement, County and Developer shall provide written notice to LLWD of such termination.
- 20 5. Developer and County shall coordinate and cooperate in the effort to establish prior rights related to utility
21 encroachments into Caltrans and County right-of-way. In the case that any utility companies are determined
22 to have prior rights, the cost of relocating utilities shall be borne by County.
- 23 6. Ownership and title to all materials, equipment, and appurtenances installed as part of this agreement will
24 automatically be vested with the jurisdiction for which the improvements reside and no further agreement will
25 be necessary to transfer ownership.
- 26 7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by
27 both Parties and no oral understanding or agreement not incorporated herein shall be binding on either Party
28 hereto.
- 29 8. Developer and County shall retain or cause to be retained for audit, all records and accounts relating to the

1 Project for a period of three (3) years from the date of Notice of Completion for the Project.

2 9. Neither County nor any officer or employee thereof shall be responsible for any damage or liability occurring
3 by reason of anything done or omitted to be done by Developer under or in connection with any work,
4 authority or jurisdiction delegated to Developer under this Agreement. It is further agreed that Developer shall
5 fully indemnify and hold County harmless from any liability imposed for injury (as defined by Government
6 Code Section 810.8) occurring by reason of anything done or omitted to be done by Developer under or in
7 connection with any work, authority or jurisdiction delegated to Developer under this Agreement.

8 10. Neither Developer nor any officer or employee thereof shall be responsible for any damage or liability
9 occurring by reason of anything done or omitted to be done by County under or in connection with any work,
10 authority or jurisdiction delegated to County under this Agreement. It is further agreed that County shall fully
11 indemnify and hold Developer harmless from any liability imposed for injury (as defined by Government Code
12 Section 810.8) occurring by reason of anything done or omitted to be done by County under or in connection
13 with any work, authority or jurisdiction delegated to County under this Agreement.

14 11. This Agreement and the exhibits herein contain the entire agreement between the Parties, and are intended
15 by the Parties to completely state the Agreement in full. Any agreement or representation respecting the
16 matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in this
17 Agreement, is null and void.

18 12. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third
19 parties not party to this Agreement or affect the legal liability of either Party to the Agreement by imposing any
20 standard of care with respect to the maintenance of roads different from the standard of care imposed by law.

21 13. This Agreement may be signed in counterparts, each of which shall constitute an original and which
22 collectively shall constitute one instrument.

23 14. All notices, demands, invoices, and written communications shall be in writing and delivered to the following
24 addresses or such other address as the Parties may designate:

25 To County: Riverside County Transportation Department
26 Attention: Juan C. Perez
27 4080 Lemon Street, 8th Floor
28 Riverside, CA 92501
29 Phone: (951) 955-6740

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To Developer: Starfield Sycamore Investors, LLC

Attention: Daniel Schwaegler

100 Pine Street #3000

San Francisco, CA 94111

And: Starfield Sycamore Investors, LLC

c/o Foremost Communities

Attention: Steve Cameron

2151 Michelson Dr., Suite 250

Irvine, CA 92612

Phone: (949) 748-6714

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

[Signatures on Following Page]

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COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

Juan C. Perez

Director of Transportation

APPROVED AS TO FORM:

County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS:

_____ Dated: _____

PRINTED NAME

Chairman, Board of Supervisors

ATTEST:

Kecia Harper-Ihem

Clerk of the Board

_____ Dated: _____

Deputy

DEVELOPER

APPROVED BY:

Starfield Sycamore Investors, L.L.C., a Delaware limited liability company

By: SOF-VI Sycamore Creek Holdings, LLC, a Delaware limited liability company

By. _____

Daniel Schwaegler, Vice President

APPROVED BY:

EXHIBIT A • SCOPE OF WORK

DESCRIPTION: Indian Truck Trail will be widened from two to four through lanes with dedicated left and right-turn lanes at the Interstate 15 (I-15) Interchange. The limits are from the Caltrans right of way on the west side of the interchange to Temescal Canyon Road on the east side of the interchange. Construction of retaining walls under the I-15 bridges will accommodate the widening of Indian Truck Trail. The northbound (NB) entrance ramp to I-15 will be widened to three lanes at its intersection with Indian Truck Trail, including a High Occupancy Vehicle (HOV) preferential lane. The northbound and southbound exit ramps will be widened to three lanes at their respective intersections with Indian Truck Trail. No widening is proposed for the I-15 southbound (SB) entrance ramp. Ramp metering will be installed on I-15 NB and SB entrance ramps. Three new traffic signals will be installed at the southbound and northbound ramp intersections, and at the intersection of Indian Truck Trail / Temescal Canyon Road.

EXHIBIT B • PROJECT COST ESTIMATE / FUNDING

COST ESTIMATE	OTHER	DEVELOPER	COUNTY	TOTAL
Construction				\$5,500,000
Construction Support			\$800,000	\$800,000
Right of Way/Utilities			\$700,000	\$700,000
Design/Envir./Other		\$1,700,000	\$850,000	\$2,550,000
Cost Estimate Total				\$9,550,000
FUNDING				
Deposits	\$700,000	\$100,000		\$800,000
Planning/Design Contribution		\$1,700,000		\$1,700,000
LLWD CFD No. 1	\$4,800,000			\$4,800,000
Prop 1B SLPP Grant	\$1,000,000			\$1,000,000
DIF Major Improvement Funds			\$1,245,000	\$1,245,000
Other			\$5,000	\$5,000
Funding Total				\$9,550,000