

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

909A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
November 3, 2011

SUBJECT: Funding Transmittal Agreement by and Between the County of Riverside on Behalf of the Transportation Department and City of Menifee

RECOMMENDED MOTION: That the Board of Supervisors:
Approve the Funding Transmittal Agreement and authorize the Chairman to execute the agreement.

BACKGROUND: The County of Riverside, as a Condition of Approval for various proposed tract developments, required developers to construct certain improvement, or submit a cash-in-lieu deposit with the County if current construction of the required improvement was not feasible. The affected property and proposed construction were within the unincorporated area of the County when developer(s) filed their tract maps and the Conditions of Approval were

Juan C. Perez
Director of Transportation

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(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 2,921,246	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011-12

SOURCE OF FUNDS: Cash-in-Lieu Deposits (100%) There are no General Funds used in this project.	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

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MARSHA L. VICTOR
DATE: 11/3/11
Departmental Concurrence

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

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: November 22, 2011
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By: Deputy

Prev. Agn. Ref. | District: 3 & 5 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.14

The Honorable Board of Supervisors

RE: Funding Transmittal Agreement by and Between the County of Riverside on Behalf of the
Transportation Department and City of Menifee

November 3, 2011

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approved by the County. The required improvements have not yet been built, which has created a source of funds with which to construct such projects when the project build-out is feasible. The developer property and the required improvements are now within the newly incorporated boundaries of the City of Menifee. The attached Funding Transmittal Agreement establishes the terms under which the County will transmit the cash-in-lieu deposits to the City of Menifee, subject to the condition that the deposits be used for the construction of the required improvement(s) as identified in the Conditions of Approval and Attachment A of the agreement. The total amount of deposits to be transmitted to the City of Menifee is \$2,921,246 as specified in Attachment A of the agreement.

**FUNDING TRANSMITTAL AGREEMENT
BY AND BETWEEN THE COUNTY OF RIVERSIDE
ON BEHALF OF THE TRANSPORTATION DEPARTMENT
AND
CITY OF MENIFEE**

THIS AGREEMENT is made and entered into this 22nd day of November, 2011, by and between the County of Riverside, a political subdivision of the State of California (County), on behalf of its Transportation Department, and the City of Menifee, a newly incorporated City within the boundaries of the County of Riverside, and is made with reference to the following background facts and circumstances:

WHEREAS, the County of Riverside, as a Condition of Approval for various proposed tract developments, required developers construct certain improvements, or submit a cash-in-lieu deposit with County if current construction of the required improvement was not feasible; and,

WHEREAS, the affected property and proposed construction were within the unincorporated area of County when developer(s) filed their tract maps and the Conditions of Approval were approved by County; and,

WHEREAS, the required improvements have not yet been built which has created a source of funds with which to construct such projects when the project build-out is feasible; and,

WHEREAS, the developer's property and the required improvement is now within the newly incorporated boundaries of City; and,

WHEREAS, County desires to transmit the cash-in-lieu deposit(s) to City, subject to the condition that the deposits be used for the construction of the required improvement(s).

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the parties do agree as follows:

1. The above referenced Recitals are incorporated herein.
2. The understanding embodied in this Agreement is for the transmittal of funds by County to City to be used solely toward the construction of those improvement project(s) that have been identified in the Conditions of Approval applicable to developer projects as set forth in Attachment A hereto, and incorporated herein by this reference.
3. City incorporated and began operation as a City according to all applicable rules, regulations and laws of the State of California as of October 1, 2008.
4. It is the Agreement between County and City that the total funds to be transmitted to City is \$2,921,246.37, as allocated to each project as set forth in Attachment A.
5. Upon transmittal of the funds noted herein, City shall be solely responsible for retention/handling of such funds until the listed project(s) are constructed.

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6. The parties agree that should circumstances arise which result in additional work or costs for the project(s) not covered by the funds transmitted herewith, City shall be solely responsible to deal with the project costs.

7. City shall maintain an accounting of all funds received from County pursuant to this Agreement in accordance with generally accepted accounting principles. City agrees to keep all project records for a period of not less than three years from the date a notice of completion is filed by the City on such projects; or, if the projects are not ones as to which a notice of completion would normally be recorded, for three years from the date of completion. City shall permit County or any other appropriate government agency, at any reasonable time, upon reasonable notice, to inspect any records maintained in connection with the funds and project(s). County shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection.

8. No waiver of any event of default or breach by one party hereunder shall be implied from any omission by the other party to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and the waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by one party to or of any act by the other party shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act.

9. Neither County nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority or jurisdiction delegated to City under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, City shall fully indemnify and hold County harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to City under this Agreement.

10. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by voluntary negotiations between the parties shall first be decided by the County Transportation Director or designee, who may consider any written or verbal evidence submitted by City. This decision shall be issued in writing. However, no action in accordance with this Section shall in any way limit either party's rights and remedies through actions in a court of law with appropriate jurisdiction. Neither the pendency of dispute nor its consideration by County will excuse City from performance in accordance with the terms of this Agreement.

11. City warrants that all aspects of the handling of the funds hereunder and the project(s) associated therewith shall be undertaken in compliance with all applicable local, state and federal rules, regulations and laws.

12. This Agreement may not be assigned without the express written consent of County first being obtained.

13. City, its successors in interest and assigns shall be bound by all the provisions contained in this Agreement.

14. City warrants that the funds received by City pursuant to this Agreement shall only be used in a manner consistent with the listing of project(s) set forth in Attachment A, and

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all applicable regulations and laws. Any provision required to be included in this type of agreement by federal or state law shall be deemed to be incorporated into this Agreement.

15. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing, such as Federal Express or UPS); sent by telecopier or facsimile machine capable of confirming transmission and receipt; or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to Agency: Juan C. Perez, Director
Riverside County Transportation Department
4080 Lemon Street, 8th Floor
P.O. Box 1090
Riverside, CA 92502-1090
Telephone: (951) 955-6740
Fax.: (951) 955-3198

If to City: Kathy Bennett, City Clerk
City of Menifee
29714 Haun Rd
Menifee, CA 92586
Telephone: (951) 672-6777
FAX No.: (951) 679-3843

Notices sent in accordance with this paragraph shall be deemed delivered upon the next business day following the: (i) date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); (ii) the date of actual receipt (if personally delivered by other means); (iii) date of transmission (if sent by telecopier or facsimile machine); or (iv) the date of delivery as indicated on the return receipt if sent by certified or registered mail, return receipt requested. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

16. This Agreement and the attachments hereto contain the entire agreement between the parties, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matter dealt with herein or the duties of any party in relation thereto, not expressly set forth in this Agreement, is null and void.

17. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. In the event either party hereto brings an action or proceeding for a declaration of the rights of the parties, for injunctive relief, for an alleged breach or default, or any other action arising out of this Agreement, or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs incurred in

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such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

19. This Agreement and all documents provided for herein shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising from this Agreement shall be adjudicated in the courts of Riverside County, State of California.

20. City warrants that the execution, delivery and performance of this Agreement and any and all related documents are duly authorized at time of execution and do not require the further consent or approval of any body, board or commission or other authority.

21. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives on this date:

ATTEST

COUNTY OF RIVERSIDE

By: *Karla Huston, Deputy An*
Clerk to the Board
Keia Harper Inem

By: *Bob Buster*
Chairman, Board of Supervisors
BOB BUSTER

ATTEST:

CITY OF MENIFEE

By: *Bennett*

By: *Wallace Edwards*
Mayor

FORM APPROVED COUNTY COUNSEL

BY: *M. Victor* *11/8/11*
MARSHAL VICTOR DATE

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