

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



FROM: John J. Benoit, 4th District Supervisor

SUBMITTAL DATE:
March 21, 2013

SUBJECT: Pre-Development Agreement - Indio County Law Building

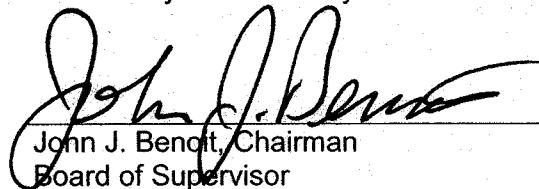
RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Pre Development Agreement for the County Law Building;
2. Authorize the Chairman of the Board to execute this agreement on behalf of the County; and
3. Authorize the Assistant County Executive Office/EDA, or his designee, to execute any other documents to complete this transaction.

BACKGROUND: In 2011, the Governor signed into law California Assembly Bill 109, known as the "Realignment Plan" which shifts the responsibility from the state to the counties for the custody, treatment and supervision of certain offenders. This legislation combined with the current level of demand for detention facilities in the County has resulted in the need for an additional detention facility.

To aid in the financing of such a facility, on March 20, 2012, the Board of Supervisors approved item 3.19 entitled "Acceptance of \$100 Million AB 900 Funding Award from the Corrections Standards Authority" formally accepting a funding award in the amount of \$100 million dollars to be applied to the planning, design, and construction of a new detention facility in the County.


(Continued)


John J. Benoit, Chairman
Board of Supervisor

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 9, 2013
xc: Supvr. Benoit, EDA

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

Departmental Concurrence

BACKGROUND: (Continued)

The Indio CAC facility at 82-675 Highway 111, Indio was deemed to be the location most suitable for this project and on November 6, 2012, the Board of Supervisors approved item 3.21 for an architectural services agreement to be executed between Hellmuth, Obata, and Kassabaum, Inc. and the County.

The County will plan and construct a detention facility on the Indio CAC site which will be known as the East County Detention Center. The site is currently improved with office and related facilities totaling approximately 122,000 square feet built from 1968 to 1975. The County plans to relocate the occupants, demolish the facilities, and construct the new detention complex. The new detention complex will accommodate approximately 1,250 beds. On February 26, 2013, the Board of Supervisors approved the "Monthly Progress Report Regarding the East County Detention Center" which enumerated the documents required by the State to date in connection with the state provided bond financing and confirmed the submittal of these documents to the state and compliance by County.

To facilitate the relocation of the current departments and other entities occupying the Indio CAC and to ensure timely commencement and completion of the East County Detention Center project, the Economic Development Agency identified County owned land of approximately 5.86 acres on the southwest corner of Highway 111 and Jackson Street, in the city of Indio as the location most suitable for the construction of an office building of approximately 90,000 square feet to accommodate these departments and entities. The District Attorney, Public Defender, County Counsel, and Law Library will be relocated into this new leased facility. In June, 2012, The Economic Development Agency issued a request for proposal to real estate developers for the planning, design, and construction of a 90,000 square foot office building, restaurant facility, and parking areas to provide for the relocation facilities. The deal structure required by the County was a ground lease on the County owned land to a developer, planning and construction of the project by the developer, and a facilities lease from the developer to the County for the County's leasing and occupancy of the facility. By August of 2012, the Agency had received eighteen responses to the Request For Proposal. Thereafter, the Agency reviewed the proposals, conducted panel interviews, and after thorough due diligence awarded the project to the Trammell Crow Company.

The purpose of this form 11 is to authorize the Chairman of the Board to execute the Pre-Development Agreement with the Trammell Crow Company to pay expenses for the design, space planning, entitlement and related services incurred to date and to move this project forward.

The Agency is working to negotiate a Ground Lease, Facilities Lease and Development Agreement with the Trammell Crow Company and will bring these negotiated documents to the Board in short order for Board of Supervisors approval.

PRE-DEVELOPMENT AGREEMENT

This PRE-DEVELOPMENT AGREEMENT ("Agreement") is made effective as of the day of April 2013 and is made by and among the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"), TRAMMELL CROW SO. CAL. DEVELOPMENT SERVICES, INC, a Delaware corporation ("TCSC") and RIVERSIDE COMMUNITY PROPERTIES DEVELOPMENT, INC., a California nonprofit public benefit corporation ("RCP").

RECITALS

A. County has determined that its best interests can be served by consolidating certain of its departments into a new County law office building to be constructed on that certain land owned by the County and located at the southwest corner of Highway 111 and Jackson Street, Indio, California ("Property").

B. TCSC is a national real estate development firm with experience in the oversight and management of design, permit processing and construction of office buildings.

C. RCP is a single-purpose entity formed for the purpose of developing and financing said new office building and a retail building and related facilities ("Project"), as to be further described in the Facilities Lease Agreement and its exhibits which is currently being negotiated by County and RCP ("Facilities Lease").

D. County has requested that RCP undertake the development and financing of the Project and to thereby relieve County of the governmental burden thereof.

E. County, as ground lessor, and RCP, as ground lessee, are currently negotiating a ground lease ("Ground Lease") for the Property upon which the Project is to be constructed.

F. RCP and County anticipate that financing for the Project will be pursuant to the issuance by RCP of tax-exempt obligations in accordance with the provisions of Revenue Ruling 63-20 of the U.S. Treasury, as amended and updated by Revenue Procedure 82-26 of the U.S. Treasury (the "Bonds"). Issuance by RCP of the Bonds to finance the cost of the Project in an amount approved by the County through the Facilities Lease is anticipated to be considered by the Board of Supervisors of the County of Riverside in June, 2013.

G. As a condition to the closing of RCP's issuance of the Bonds, the Facilities Lease between RCP, as landlord, and County, as tenant, shall be entered into setting forth in more specific detail the obligations of the parties with regard to the development and leasing of the Project.

H. RCP desires to engage TCSC to oversee and manage certain development activities for the Project pursuant to a separate development management agreement ("Development Agreement") that is currently being negotiated between RCP and TCSC (the Ground Lease, Facilities Lease and Development Agreement are collectively referred to herein as the "Project Agreements") and the County concurs with RCP's engagement of TCSC.

I. In order to meet County's timing concerns, County desires that RCP and TCSC commence, prior to the issuance of the Bonds and the finalization of the Project Agreements, the

performance of pre-development activities for the Project and, as an accommodation to County, RCP and TCSC agree to proceed with the performance of certain pre-development activities pursuant to the terms of this Agreement.

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, RCP, TCSC and County agree as follows:

AGREEMENTS

1. **Good Faith Negotiation of the Project Agreements.** County, RCP and TCSC agree to proceed with the negotiation of the Project Agreements in good faith and with due speed and diligence.
2. **Pre-Development Services.** Prior to County and RCP entering into the Facilities Lease and Ground Lease, RCP shall undertake certain obligations related to the Project. Without limitation, those obligations include (i) negotiating the Development Agreement with TCSC, (ii) negotiating an agreement with Langdon Wilson International for design of the Project, (iii) negotiating a construction agreement with a general contractor approved by County for construction of the Project, (iv) negotiating the terms and conditions of the Facilities Lease and Ground Lease with County, and (v) taking all such actions as may be reasonably required to advance the Project in the pre-development period. In addition, at County's request, prior to RCP and TCSC entering into the Development Agreement, TCSC shall assist with (a) due diligence for the Project, (b) the pursuit of entitlements for the Project, (c) the oversight of design and other professionals for the preparation of preliminary drawings for the Project, and (d) such other matters that TCSC reasonably deems necessary for the Project.
3. **Pre-Development Costs.** In connection with the performance by RCP and TCSC of certain pre-development services as provided in Section 2 above, costs, expenses and other financial obligations will be incurred by RCP and TCSC in connection with the Project ("Pre-Development Costs") pursuant to this Pre-Development Agreement. Without limitation, such Pre-Development Costs for the Project are anticipated to include (i) due diligence costs, (ii) application, processing, plan check and permitting costs, (iii) design fees, (iv) consultant fees and (v) miscellaneous costs including title and surveying expenses. The Pre-Development Costs shall be paid in accordance with Section 7 below; provided, however, that if the Bonds are issued, the Pre-Development Cost shall be paid from the proceeds of the Bonds, either as a reimbursement to RCP or TCSC. If the Bonds are not issued by the deadline set forth in Section 8 or this Agreement is terminated, the Pre-Development Costs shall be paid by County to RCP and TCSC as provided in Section 7 below.
4. **Bond Financing.** Subject to market conditions and Project requirements of County, RCP shall use its commercially reasonable efforts to finance the Project through its issuance of the Bonds utilizing the services of RCP's designated underwriter, Barclay's Capital, for the sale of the Bonds. The Bonds shall be in an amount sufficient to pay for the costs of design, permitting, development and construction of the Project. The total amount of the Bonds to be issued, the interest rates, amortization schedule, the Bond documents and other terms and conditions of such financing shall be subject to approval by County in its reasonable discretion.
5. **Reimbursement of Certain County Costs.** County may incur certain costs in connection with development of the Project prior to the issuance of the Bonds. If the County elects to be reimbursed for such costs, County shall give RCP appropriate notice of the nature and amount

of such costs. In that event and to the extent permissible under applicable law, RCP shall increase the total amount of the Bonds and cause such costs to be reimbursed to County upon issuance of the Bonds.

6. TCSC Pre-Development Fee. TCSC shall be entitled to a development management fee ("TCSC Fee") of Ten Thousand and No/100 Dollars (\$10,000.00) for each month to occur during the pre-development period, commencing as of December 1, 2012 and continuing until this Agreement is terminated. This agreement, unless terminated earlier pursuant to section 7 or 8, shall terminate upon the effective date of the Ground Lease and Facilities Lease Agreement. If the Bonds are issued and the Project Agreements are executed by the deadline set forth in Section 8 below, the TCSC Fee shall be paid from the proceeds of the Bonds pursuant to the terms of the Development Agreement. If the Bonds are not issued and/or the Project Agreements are not executed by the deadline set forth in Section 8 below, the TCSC Fee shall be paid by County to TCSC as provided in Section 7 below.

7. Payment of Fees upon Termination of this Agreement. County, RCP or TCSC may at any time upon ten (10) days' written notice terminate this Agreement. In the event of termination of this Agreement, following County's satisfaction of its payment obligations set forth in this Section 7, RCP and TCSC shall assign to County any agreements entered into by RCP and/or TCSC in connection with the Project prior to such termination, together with any rights RCP and/or TCSC may have with respect to any work product or permits generated in connection with the Project that County elects in its sole discretion to assume. Any agreements which County elects not to assume shall be terminated by RCP and TCSC, as applicable. In the event of a termination of this Agreement, within ten (10) days following submission of an invoice therefor, County shall (i) reimburse RCP and TCSC for Pre-Development Costs, including reasonable attorneys' fees, incurred by RCP and TCSC, (ii) reimburse RCP and TCSC for any direct, and actual costs reasonably incurred by RCP or TCSC by reason of such termination, and (iii) pay TCSC the TCSC Fee to which TCSC is entitled to pursuant to Section 6 above. This agreement, unless terminated earlier pursuant to this section, shall terminate upon the effective date of the Ground Lease and Facilities Lease.

8. Failure to Close Bond Financing. If, despite the good faith efforts of RCP and County, RCP is unable to issue the Bonds and/or the parties fail to enter into the Project Agreements by June 1, 2013 (or such later date as may be agreed by the parties), this Agreement shall terminate and the provisions of Section 7 above shall apply.

9. Breach; Remedy. In the event any party defaults or fails to perform its obligations hereunder, the aggrieved party may seek any and all remedies available at law or in equity.

10. Miscellaneous.

10.1 Governing Law. This Agreement shall be construed according to laws of the State of California. Any claim or dispute arising out of this agreement shall be brought in the courts of the County of Riverside.

10.2 Full Information. County shall provide full information regarding the requirements for the Project and RCP and TCSC may rely on the accuracy and completeness of any information provided.

10.3 Scope of TCSC Services. TCSC has no control over, charge of, and shall not be responsible for, any legal, design, engineering, consulting or other professional or construction work or services performed in connection with the Project nor shall TCSC be responsible for any act or omission of RCP; provided that TCSC shall be responsible for any services it actually provides in its capacity as a development manager for the Project.

10.4 Prevailing Party. In the event that any party to this letter agreement brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action shall be entitled to recover its actual attorneys' fees and costs from the non-prevailing party.

10.5 Proof of Funds. County shall, at the written request of RCP or TCSC, prior to commencement of any work or services in connection with the Project and thereafter, furnish to RCP and TCSC reasonable evidence that financial arrangements have been made to fulfill the County's obligations under this Agreement. At RCP and/or TCSC's option, furnishing of such evidence shall be a condition precedent to commencement or continuation of any work or services for the Project. After such evidence has been furnished, County shall notify RCP and TCSC of any material variation to such financial arrangements.

10.6 Counterpart Signatures. Each party hereto and their respective successors and assigns shall be authorized to rely upon signatures of each person and entity on this letter agreement which are delivered by facsimile or PDF as constituting a duly authorized, irrevocable, actual delivery of this letter agreement with original ink signatures of each person and entity.

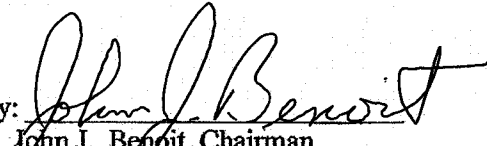
11.7 Approval of Supervisors. This agreement shall not be binding or effective until its approval and execution by the Chairman of the Riverside County Board of Supervisors.

(Signatures Follow on Next Page.)

DATED as of the day and year signed by the County Chairman.


LESSEE:

COUNTY OF RIVERSIDE

By: 
John J. Benoit, Chairman
Board of Supervisors

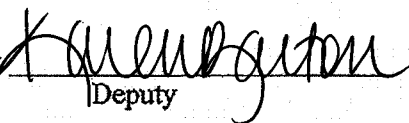
TCSC:

TRAMMELL CROW SO. CAL.
DEVELOPMENT SERVICES, INC., a
Delaware Corporation

By: 
Name: David Nazaryk
Title: VP

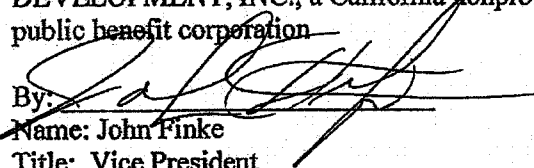
ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy


RCP:

RIVERSIDE COMMUNITY PROPERTIES
DEVELOPMENT, INC., a California nonprofit
public benefit corporation

By: 
Name: John Finke
Title: Vice President

APPROVED AS TO FORM:

Pamela J. Walls
County Counsel

By: 
Patricia Munroe
Deputy County Counsel

SG:ra/022513/15.68