

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

328



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
July 18, 2013

**SUBJECT:** Development Impact Fee (DIF) Funding Transmittal Agreement with the City of Menifee (City)

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and execute the attached DIF Funding Transmittal Agreement to transfer DIF funding from the County of Riverside (County) to the City; and
2. Direct the Executive Office to transfer \$4,134,000 from DIF Fund 30519 Roads, Bridges, and Major Improvements (Sun City/Menifee Area Plan 17) to the City.

**BACKGROUND:** The DIF Program establishes and sets forth policies, regulations, and fees imposed on new development within the county relating to the funding and installation of public

Juan C. Perez  
Director of Transportation and Land Management

JCP:gh  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 4,134,000	In Current Year Budget:	NA
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/2014

<b>SOURCE OF FUNDS:</b> Development Impact Fee (DIF) (100%)	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

There are no General Funds used in this project.

**C.E.O. RECOMMENDATION:** APPROVE  
BY:   
Tina Grande  
**County Executive Office Signature**

**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: July 30, 2013  
xc: Transp., E.O.

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

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

**3-56**

FORM APPROVED COUNTY COUNSEL  
BY: Dale A. Gardner 7/11/13  
DATE: 7/11/13  
Department Concurrence

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

facilities and acquisition of parks and open space necessary to address the direct and cumulative environmental impacts generated by new development projects. The DIF Program encompasses several Area Plans, of which the majority of Sun City/Menifee Area Plan (AP 17) is now within the incorporated boundaries of the City. Since the incorporation of the City, the County no longer collects DIF within the City's jurisdictional boundaries.

The DIFs collected within each Area Plan are comprised of several components, one of which is the Transportation component for Roads, Bridges, and Major Improvements. The County desires to transmit to the City the unallocated DIF funds collected for this Transportation component within the applicable portion of Sun City/Menifee Area Plan (AP 17), and the City desires to receive such funds subject to the condition that the funds be used towards the construction of eligible Transportation component facilities within this Area Plan.

The understanding embodied in this agreement is for the transmittal of DIF funds by the County to the City to be used solely toward the construction of those improvement projects in a manner consistent with the listing of projects that fall within the city limits in the County DIF Public Facilities Needs List for the Sun City/Menifee Area Plan under the Transportation component for Roads, Bridges, and Major Improvements as set forth in Attachment "A" of this agreement.

The DIF funding agreement was approved by the Menifee City Council on May 28, 2013.

Project Number: NA

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

**THIS DIF FUNDING TRANSMITTAL AGREEMENT, ("Agreement")**, is made and entered into this 30<sup>th</sup> day of July, 2013, 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 (City), 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 adopted Ordinance No. 659, and subsequent amendments, establishing the County's Development Impact Fee (DIF) Program; and,

WHEREAS, the DIF Program establishes and sets forth policies, regulations, and fees imposed on new development in the County relating to the funding and installation of public facilities and acquisition of parks and open space necessary to address the direct and cumulative environmental impacts generated by new development projects; and,

WHEREAS, the DIF Program encompasses several Area Plans, of which the Sun City/Menifee Area Plan (AP 17) is now within the newly incorporated boundaries of the City; and,

WHEREAS, the Development Impact Fees collected within each Area Plan are comprised of several components, one of which is the Transportation component for Roads, Bridges, Major Improvements; and,

WHEREAS, County desires to transmit to the City unallocated DIF funds collected for the Transportation component for Roads, Bridges, Major Improvements fund within the Sun City/Menifee Area Plan (AP 17) and the City desires to receive such funds, subject to the condition that the funds be used towards the construction of certain Transportation component facilities within said Area Plan.

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

1. The above referenced Recitals are incorporated herein.
2. The understanding embodied in this Agreement is for the transmittal of DIF funds by County to City to be used solely toward the construction of those improvement projects in a manner consistent with the listing of projects that fall within the City limits in the County DIF Public Facilities Needs List for the Sun City/Menifee Area Plan under the Transportation component for Roads, Bridges, Major Improvements as set forth in Attachment "A", Section XVIII, items C.1 and C.2, attached 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. Upon full execution of this Agreement, the County will transmit the amount of Four Million One Hundred Thirty Four Thousand Dollars (\$4,134,000) to the City.

5. 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. The County is neither required to nor responsible for providing any additional funding for such projects.

6. 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.

7. 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.

8. 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 performed under the authority or jurisdiction of City in connection with 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 performed under the authority or jurisdiction of City in connection with this Agreement.

9. City shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any act or omission of City, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to or in any way connected with any work done or this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. City shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

10. With respect to any action or claim subject to indemnification herein by City, City shall, at their sole cost, have the right to use counsel of their own choice and shall have the right

to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes City's indemnification to County as set forth herein. City's obligation hereunder shall be satisfied when City has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

11. 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 or 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.

12. 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.

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 be used in a manner consistent with 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 telecopy 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 County:** County of Riverside  
Assistant Director of Transportation  
4080 Lemon Street, 8<sup>th</sup> Floor  
P.O. Box 1090  
Riverside, CA 92502-1090  
Telephone: (951) 955-6740  
Fax: (951) 955-3198

**If to City:** City of Menifee  
City Clerk's Office  
29714 Haun Road  
Menifee, CA 92586  
Telephone: (951) 672-6777  
Fax: (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 telecopy 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 attachment(s) hereto contain the entire agreement between the parties, and are 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 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:

COUNTY OF RIVERSIDE

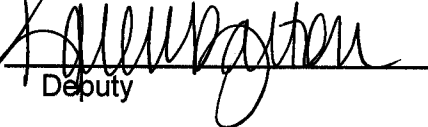
By:   
**JOHN J. BENOIT**  
Chairman, Board of Supervisors

CITY OF MENIFEE

By:   
Scott A. Mann, Mayor

ATTEST:

Kecia Harper-Ihem  
Clerk of the Board

By:   
Deputy

ATTEST:

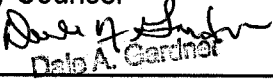
Kathy Bennett  
City Clerk

By: 

(Seal)

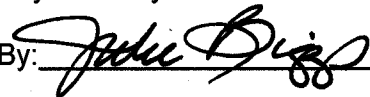
APPROVED AS TO FORM:

Pamela J. Walls  
County Counsel

By:   
Dale A. Cardinet  
Deputy County Counsel

APPROVED AS TO FORM:

Julie Hayward Biggs  
City Attorney

By: 

**ATTACHMENT "A"**

**COUNTY OF RIVERSIDE  
DIF PUBLIC FACILITIES NEEDS LIST  
SUN CITY/MENIFEE AREA PLAN (AP No. 17)**

[Attached Behind this Page]



COUNTY OF RIVERSIDE DIF UPDATE  
 UPDATED PUBLIC FACILITIES NEEDS LIST THROUGH THE YEAR 2010

FACILITY NAME	FACILITY TYPE	SIZE	TOTAL FACILITY COST [1]	OFF-SETTING REVENUES [2]	NET COST TO COUNTY	% OF COST ALLOCATED TO NEW DEVELOPMENT	COST ALLOCATED TO NEW DEVELOPMENT
<b>XVIII. FACILITIES SERVING THE SUN CITY / MENIFEE AREA PLAN (AP No. 17)</b>							
<b>A. Public Facilities Component</b>							
This Area Plan is served by the County-wide and Western County Public Facilities							
<b>B. Fire Facilities</b>							
This Area Plan is served by Western County Fire Facilities							
<b>C. Transportation Component [3]</b>							
1 Road Construction (100% of Improvement Cost, includes 100% Right of Way Costs)							
From: Garbani Rd	To:						
Wickard Rd.	0.61 miles	\$2,204,295	\$0	\$2,204,295	39.56%	\$872,071	
Scott Rd.	0.5 miles	\$903,400	\$0	\$903,400	39.56%	\$357,406	
Garbani Rd.	0.33 miles	\$1,192,488	\$0	\$1,192,488	39.56%	\$471,776	
Maxine Ln.	1.75 miles	\$0	\$0	\$0		\$0	
Bradley Rd.	0.61 miles	\$2,204,295	\$0	\$2,204,295	39.56%	\$872,071	
Garbani Rd.	0.4 miles	\$1,445,440	\$0	\$1,445,440	39.56%	\$571,850	
Goetz Rd.	3.33 miles	\$6,017,235	\$0	\$6,017,235	39.56%	\$2,380,558	
Holland Rd.	2.01 miles	\$3,632,260	\$0	\$3,632,260	39.56%	\$1,437,007	
Briggs Rd.	0.25 miles	\$452,293	\$0	\$452,293	39.56%	\$178,937	
Zeiders Rd.	1 miles	\$0	\$0	\$0		\$0	
Menifee Rd.	2.04 miles	\$3,685,871	\$0	\$3,685,871	39.56%	\$1,458,217	
McCall Blvd.	1.2 miles	\$0	\$0	\$0		\$0	
Valley Blvd.	1 miles	\$0	\$0	\$0		\$0	
McCull Blvd.	2.1 miles	\$0	\$0	\$0		\$0	
Menifee Rd.	0.5 miles	\$0	\$0	\$0		\$0	
Menifee Rd.	1.2 miles	\$2,276,567	\$0	\$2,276,567	39.56%	\$900,663	
Rouse Rd.	1 miles	\$0	\$0	\$0		\$0	
Rouse Rd.	1 miles	\$0	\$0	\$0		\$0	
Scott Rd.	2 miles	\$0	\$0	\$0		\$0	
Scott Rd. (60%) See (16,17)	2.91 miles	\$0	\$0	\$0		\$0	
Sherman Rd.	0.13 miles	\$1,795,469	\$0	\$1,795,469	39.56%	\$710,329	
Sherman Rd.	0.12 miles	\$235,137	\$0	\$235,137	39.56%	\$93,026	
Sherman Rd.	.12 miles So. of Chambers Rd.	\$108,408	\$0	\$108,408	39.56%	\$42,889	
Subtotal Roads		\$26,153,158	\$0	\$26,153,158	39.56%	\$10,346,799	
2 Major Improvements (100% of costs)							
Interstate 215 and McCall Boulevard - widen bridge and ramps, install signals, widen street approaches, synchronize signals to frontage roads (both sides)		\$0	\$0	\$0		\$0	
Interstate 215/Scott Road Interchange (interim improvements)		\$0	\$0	\$0		\$0	
Subtotal Major Improvements		\$2,500,000	\$0	\$2,500,000	39.56%	\$989,058	
3 Transportation Maintenance Yard (Murrieta) (see Section IV for aggregate cost information)							
As warranted per formula	2.35 Acres	\$2,055,859	\$1,321,624	\$734,235	39.56%	\$290,481	
4 Traffic Signals							
Subtotal Transportation Component		\$30,709,018	\$1,321,624	\$29,387,394		\$11,626,338	
<b>D. Conservation Land Bank Component</b>							
This Area Plan is served by the Western County Conservation and Land Bank Facilities							

[1] Total cost includes construction and equipment as appropriate

[2] Represents money currently available. Does not include expected funds.

[3] Excludes RRBD and TUMF facilities.

(Original facilities are additions to Original Needs List)  
 Original Facilities costs adjusted with BCI, CCI, or CPI.

\* Facility on Needs List 2000

**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** GARY GRANT

**Address:** 27068 JARVIS ST  
(only if follow-up mail response requested)

**City:** PERRIS **Zip:** 92570

**Phone #:** 951-667-9319

**Date:** JULY 30TH 03 **Agenda #** 3.56

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

Support  Oppose  Neutral

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

Support  Oppose  Neutral

**I give my 3 minutes to:** \_\_\_\_\_

## **BOARD RULES**

### **Requests to Address Board on "Agenda" Items:**

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

### **Requests to Address Board on items that are "NOT" on the Agenda:**

Notwithstanding any other provisions of these rules, member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES.

### **Power Point Presentations/Printed Material:**

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please insure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

### **Individual Speaker Limits:**

**Individual speakers are limited to a maximum of three (3) minutes.** Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. **Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.**

### **Group/Organized Presentations:**

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the front bottom of the form.

### **Addressing the Board & Acknowledgement by Chairman:**

The Chairman will determine what order the speakers will address the Board, and will call on all speakers in pairs. The first speaker should immediately step to the podium and begin addressing the Board. The second speaker should take up a position in one of the chamber aisles in order to quickly step up to the podium after the preceding speaker. This is to afford an efficient and timely Board meeting, giving all attendees the opportunity to make their case. Speakers are prohibited from making personal attacks, and/or using coarse, crude, profane or vulgar language while speaking to the Board members, staff, the general public and/or meeting participants. Such behavior, at the discretion of the Board Chairman may result in removal from the Board Chambers by Sheriff Deputies.