

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



452A

FROM: TLMA - Transportation Department

SUBMITTAL DATE:
August 8, 2013

SUBJECT: Transportation Uniform Mitigation Fee (TUMF) Program Reimbursement Agreement between the County and Lennar Homes of California, Inc., for road improvements associated with Tract 36376-1 and Tract 36376.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the subject Agreement between the County and Lennar Homes California, Inc., (Developer); and
- 2) Authorize the Chairman of the Board of Supervisors to execute the same.

BACKGROUND: The attached Reimbursement Agreement is a supplemental document to the TUMF Improvement and Credit Agreement for the same tract. The improvements include the construction of two (2) lanes of roadway and four (4) lanes of bridge over Tualota Creek on

Juan C. Perez
Director of Transportation and Land Management

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

SOURCE OF FUNDS: TUMF - 100%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Fund used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Ashley 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: August 20, 2013
 xc: Transp.

Kecia Harper-Ihem
 Clerk of the Board
 By:
 Deputy

Prev. Agn. Ref.

District: 3/3

Agenda Number:

3-102

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner 8/16/13 DATE
DALE A. GARDNER
Departmental Concurrence

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

The Honorable Board of Supervisors

RE: Transportation Uniform Mitigation Fee (TUMF) Program Reimbursement Agreement between the County and Lennar Homes of California, Inc., for road improvements associated with Tract 36376-1 and Tract 36376.

August 8, 2013

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Butterfield Stage Road along frontages of Tract 36376-1 and Tract 36376. These road improvements are identified under the TUMF Program and are required by conditions of approval for the tract, which are owned by the Developer.

The Transportation Department has determined that the Developer would be eligible for a reimbursement amount of approximately \$4,444,092 from the TUMF Program. Upon completion of the improvements, acceptance by the County, and verification of actual costs the Transportation Department will determine the actual reimbursement amount due to the Developer.

The payment of the reimbursement amount is subject to the improvements being scheduled for funding pursuant to the Western Riverside Council of Governments (WRCOG) Transportation Improvement Program (TIP), and WRCOG having funds available and appropriated for payment of the reimbursement amount.

A companion item appears on the County's agenda this same date.

**REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

20th THIS REIMBURSEMENT AGREEMENT ("Agreement") is executed this day of August, 2013, by and between the County of Riverside, a subdivision of the State of California ("County"), and Lennar Homes of California, Inc., a California Corporation, with its principal place of business at 980 Montecito Avenue, Suite 302, Corona, CA 92879 ("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 and County accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 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 14.5 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 estimated Reimbursement shall be \$4,444,092 ("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 14.2, 14.3, and 14.4 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 14.5, and Sections 15.0 through 15.16.

[SIGNATURES OF PARTIES ON NEXT PAGE]

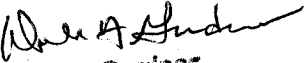
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE


RECOMMENDED FOR APPROVAL:

By: 
Juan C. Perez
Director of Transportation and Land
Management

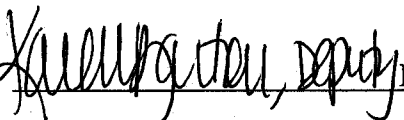
APPROVED AS TO FORM:

By: 
Dale A. Gardner
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:


By:  Date: AUG 20 2013
JOHN J. BENOIT
Chairman, County Board of Supervisors

ATTEST:

By:  Date: AUG 20 2013
Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

Lennar Homes of California, Inc.

By: 
Jeffrey T. Clemens
Printed Name
Vice President
Title

By: _____

Printed Name

Title

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On July 2, 2013, before me, Sherry Alworth, a Notary Public for the State of California, personally appeared Jeffrey T. Clemens, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sherry Alworth (Seal)

My Commission expires October 23, 2015

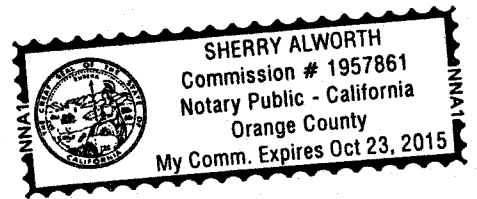


EXHIBIT "H"

Estimated TUMF Credit / Reimbursement Summary

Lennar Homes of California, Inc
 Tract 36376-1 & TR 36376 (MS4273)
 IP120047

List of Eligible Streets/Facilities under the TUMF Network:

Butterfield Stage Road (SW TUMF Zone) - 2 Lanes of Roadway and 4 Lanes of Bridge

TUMF Credit Cost Factors:

Paid TUMF (see next page for details)	\$	-
Estimated TUMF Obligation (see next page for details)	\$	3,921,866
TUMF Unit Cost Assumptions (see next page for details)	\$	8,365,958
Improvement Costs (Engineer's Estimate) (see below for details)	\$	8,489,760

Improvement Costs Breakdown

Street Improvement Construction Costs (Engineer's Estimate)	\$	800,000
Right of Way Costs	\$	92,000
Bridge Construction Costs (Engineer's Estimate)	\$	6,502,400
Planning, Engineering, Geotechnical Services	\$	1,095,360
Improvement Costs Total	\$	8,489,760

Estimated TUMF Credit:

Estimated Credit (Lesser of Obligation, Bid Amount, or Unit Cost Assumptions)	\$	3,921,866
Estimated number of remaining units		442
Prorated Credit per each remaining unit (up to max TUMF fee per unit)	\$	8,873
Estimated Credit to be applied to remaining units		\$3,921,866

TUMF Overpayment / Refund:

Estimated TUMF Obligation	\$	3,921,866
Estimated Credit amount + Paid TUMF amount	\$	3,921,866
Estimated Refund (Credit + Paid TUMF amount that exceeds Obligation amount)		\$0

TUMF Reimbursement:

Estimated TUMF Obligation	\$	3,921,866
Estimated Cost (Lesser of Bid Amount or Unit Cost Assumptions)	\$	8,365,958
Estimated TUMF Reimbursement (Cost exceeding Obligation amount)		(\$4,444,092)

Note: The amounts shown in this Exhibit are subject to cost validation and reconciliation.

Lennar Homes of California, Inc
 Tract 36376-1 & TR 36376 (MS4273)
 IP120047

ESTIMATED TUMF OBLIGATION CALCULATION

Paid TUMF	Fee per Unit	Units	Amount
Single Family Residential	\$ 8,873	0	\$ -
	Paid Subtotal	0	\$ -

Unpaid TUMF - Estimated Remaining Units	Fee per Unit	Units	Amount
Single Family Residential (TR 36376-1)	\$ 8,873	339	\$ 3,007,947
Single Family Residential (TR 36376)	\$ 8,873	103	\$ 913,919
	Estimated Subtotal	442	\$ 3,921,866
	Obligation Total	442	\$ 3,921,866

TUMF UNIT COST ASSUMPTION CALCULATION (2009 Unit Cost Assumption)

TUMF Network Road Segment applicable to Proposed Improvements	Cost Item	Amount
Butterfiled Stage Rd, Murrietta Hot Springs to Auld Rd		
Network Distance: 2.23 miles	Road Const	\$ 6,788,000
Existing Lanes: 0	ROW/Utilities	\$ 2,114,000
Increase in Lanes: 4	Planning (10%)	\$ 678,800
	Engring (25%)	\$ 1,697,000
	Conting (10%)	\$ 890,200
	Network Road Segment Cost Est	\$ 12,168,000
	Network Unit Cost per Lane mile	\$ 1,364,126
	Network Unit Cost per Lane foot	\$ 258

Road Improvement Cost Estimate (based on Network Unit Cost per Lane foot)				
Lane	Construction Limits (Sta. to Sta.)		Linear Feet	Amount
2	18+97.79	27+08.06	810.27	\$ 209,339
2	30+71.94	39+05.05	833.11	\$ 215,240
4	18+97.79	27+08.06	810.27	\$ 209,339
4	30+71.94	39+05.05	833.11	\$ 215,240
			Road Subtotal	\$ 849,158

TUMF Network Bridge	Cost Item	Amount
Bridge Name: Butterfield Stage Rd Bridge		
Network Distance: 450 feet	Bridge Const	\$ 5,184,000
Existing Lanes: 0	Planning (10%)	\$ 518,400
Increase in Lanes: 4	Engring (25%)	\$ 1,296,000
	Conting (10%)	\$ 518,400
	Network Bridge Cost Est	\$ 7,516,800
	Network Bridge Cost per Lane	\$ 1,879,200

Bridge Improvement Cost Estimate (based on Network Unit Cost per Lane)				
Lane	Construction Limits (Sta. to Sta.)		Linear Feet	Amount
	Construct Four (4) Lane Bridge @ Butterfield Stage Rd			\$ 7,516,800
				\$ -
			Bridge Subtotal	\$ 7,516,800

RBBB OVERLAP (If Applicable)

Lane	Street	Amount
		\$ -
	RBBB OVERLAP TOTAL	\$ -

TUMF TOTAL	\$ 8,365,958
RBBB OVERLAP TOTAL	\$ -

TOTAL TUMF UNIT COST ASSUMPTION FOR ELIGIBLE IMPROVEMENTS	\$ 8,365,958
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