

520



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

**FROM:** TLMA – Transportation Department

**SUBMITTAL DATE:**  
May 6, 2014

**SUBJECT:** Approval of a Permanent License and Indemnity Agreement Between the City of La Quinta and the County of Riverside Regarding the Widening of Fred Waring Drive Between Adams Street and Port Maria Road. District 4/District 4; [\$2,500 Ongoing]; Local Funds 100%

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

1. Approve the attached Permanent License and Indemnity Agreement between the City of La Quinta and the County of Riverside regarding the widening of Fred Waring Drive between Adams Street and Port Maria Road; and
2. Authorize the Chairman of the Board to execute the same.

**BACKGROUND:**

**Summary**

The Transportation Department is widening Fred Waring Drive to six lanes between Adams Street and Port Maria Road. The westbound lanes of Fred Waring Drive through this segment are generally located within County of Riverside (County) jurisdictional boundaries, whereas the eastbound lanes are located within the City of La Quinta (City) boundaries.

Patricia Romo  
Assistant Director of Transportation

Juan C. Perez, Director of Transportation and Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 2,500	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** Gas Tax 100%  
There are no General Funds used in this Project.

**Budget Adjustment:** No  
**For Fiscal Year:** 13/14

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Tina Grande

County Executive Office Signature

### MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Jeffries, Tavaglione, Stone and Benoit  
**Nays:** None  
**Absent:** Ashley  
**Date:** May 20, 2014  
**xc:** Transp.

Kecia Harper-Ihem  
 Clerk of the Board  
 By:   
 Deputy

**Prev. Agn. Ref.:** 5/1/12, Item 3-36  
6/3/08, Item 3-75

**District:** 4/4

**Agenda Number:** 3-41

FORM APPROVED COUNTY COUNSEL  
 BY: PATRICIA MUNROE  
 5/6/14  
 DATE  
 Departmental Concurrence

- A-30
- Positions Added
- 4/5 Vote
- Change Order

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11: Approval of a Permanent License and Indemnity Agreement Between the City of La Quinta and the County of Riverside Regarding the Widening of Fred Waring Drive Between Adams Street and Port Maria Road. District 4/District 4; [\$2,500 Ongoing]; Local Funds 100%**

**DATE:** May 6, 2014

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (continued)**

Fred Waring is one of the identified regional arterials to be improved in the original Measure "A" and identified in Coachella Valley Association of Government's (CVAG) Regional Arterial Program. Fred Waring is a six lane facility west of Adams Street and east of Port Maria Road; however, Fred Waring between Adams Street and Port Maria Road currently exists as a four lane facility. The Transportation Department in cooperation with the City of La Quinta worked to develop the scope of work necessary to widen Fred Waring Drive between Adams Street and Port Maria Road to six lanes.

In June 2008, the County and City entered into a License and Indemnity Agreement which allowed the County to re-stripe Fred Waring to four lanes (two in each direction) while the six lane concept was being developed.

On May 1, 2012 (Item 3-36), the Board of Supervisors approved and executed a Memorandum of Understanding (MOU) and a Second Amendment to the License and Indemnity Agreement between the City and the County, which identified the preferred alternative for this widening project.

The Permanent License and Indemnification provides the final terms between the parties regarding construction and maintenance responsibilities, as well as indemnification of the City for potential claims that may arise as a result of construction of the improvements. The County will be responsible for the construction of the project, and the County and City will share in the cost of landscape maintenance of the median.

Project No.: B5-0689

**Impact on Residents and Businesses**

Adequate regional transportation facilities are essential to public health, safety, and welfare. Fred Waring is one of the identified regional arterials to be improved in the original Measure "A" and identified in CVAG's Regional Arterial Program. These widening improvements will complete a critical missing link along this vital arterial.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The Fred Waring Drive widening project is funded with a grant from Proposition 1B State-Local Partnership funds, Transportation Uniform Mitigation funds from CVAG, and Palm Desert Finance Authority funds. These funds are secured under separate agreements. The project includes median landscaping improvements, and the County and the City will equally share in the estimated annual maintenance cost of \$5,000.

**Contract History and Price Reasonableness**

N/A

**PERMANENT LICENSE AND INDEMNITY AGREEMENT**

THIS PERMANENT LICENSE AND INDEMNITY AGREEMENT ("Agreement"), is made to be effective this 20th day of May, 2014, by and between the CITY OF LA QUINTA, a California Charter city ("City"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"), with reference to the following:

**RECITALS**

WHEREAS, the City and the County have entered into that certain License and Indemnity Agreement dated June 3, 2008, ("Original License") pursuant to which City granted a temporary, conditional license to the County to permit a temporary encroachment along Fred Waring, between Adams Street and Port Maria Road, to install interim roadway improvements ("Interim Improvements") and County has accepted the license and agreed to indemnify the City for these Interim Improvements, as more particularly described in the Original License; and

WHEREAS, the City and the County have entered into that First Amendment to License and Indemnify Agreement, dated November 2, 2010, ("First Amendment") to extend the term of the Original License; and

WHEREAS, the City and the County have entered into that Second Amendment to License and Indemnify Agreement, dated May 1, 2012, ("Second Amendment") to provide for the second extension of the term of the Original License; and

WHEREAS, the City and County have entered into that certain Memorandum of Understanding dated May 1, 2012 ("MOU") to address each party's roles and responsibilities relating to alternate design choices, CEQA consideration and a final agreement for permanent roadway improvements referenced as the Fred Waring Drive Improvements, if a road improvement project is ultimately approved, an extension for the term of the Original License is warranted; and

WHEREAS, the County, as lead agency, pursuant to the California Environmental Quality Act, has prepared an Initial Study/Mitigated Negative Declaration ("IS/MND") for Environmental Assessment No. 42564 to analyze the Fred Waring Drive Improvements and circulated the IS/MND for public review and comment between October 20, 2012 and November 22, 2012; and

WHEREAS, on January 8, 2013, the Board of Supervisors for the County of Riverside, based upon the findings incorporated therein, adopted an Initial Study/Mitigated Negative Declaration for Environmental Assessment No. 42564 and a Mitigation Monitoring and Reporting Program for the Fred Waring Drive Improvement Project ("Project") and approved the Project; and

WHEREAS, the City and County concur on the selection of Alternative No. 1 ("Alternative") and City has reviewed and approved the design plans for this Alternative; and

WHEREAS, plans prepared by County provide for landscaping improvements in accordance with the requirements of the MOU and said landscape improvements have been reviewed and approved by City; and

WHEREAS, plans prepared by County include rubberized asphalt overlay on the road surfaces for attenuation of noise in accordance with the requirements of the MOU; and

WHEREAS, plans prepared by County include construction of sound walls required for mitigation of noise in accordance with the requirements of the MOU; and

WHEREAS, County has prepared traffic control and roadway improvement plans in accordance with the requirements of the MOU and said plans have been reviewed and approved by City; and

WHEREAS, County has procured adequate funds to perform the design and complete the construction of the proposed improvements; and

WHEREAS, the City and the County now desire to enter into this Permanent License and Indemnity Agreement that shall supersede the Original License, the First and Second Amendments thereto and the MOU to implement the Project and proceed with construction of those proposed improvements; and

NOW, THEREFORE, incorporating the foregoing recitals and in consideration thereof and for good and valuable consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of License. The City hereby grants a license to the County to permit the encroachment onto City right-of-way in order to construct the Alternative proposed improvements in accordance with the plans as approved by City and in accordance with an encroachment permit issued by the City to the County prior to commencement of construction. The City grants the County a waiver for payment of fees for issuing said encroachment permit.
2. Term of License. The term of the license shall commence on the date that this Agreement has been fully executed by all parties and shall continue until such time this Agreement is no longer needed or if the parties mutually agree in writing to terminate this Agreement.
3. Terms for Inclusion from MOU. Pursuant to the MOU, the parties have agreed that the Permanent License and Indemnity Agreement shall include the terms provided below in Sections 3.1 through 3.5.

3.1 In as much as the Project affects existing landscape improvements the County shall be required to install new irrigation, landscaping and landscape lighting on both the north and south sides of the Project Site. The landscaping must



be drought tolerant and should include an option for artificial turf within the median(s) on Fred Waring Drive. The landscaping must be based on specifications prepared by the County and approved by the City and the Coachella Valley Water District. The County and City will share in the maintenance cost of the median landscaping and irrigation water equally. County and City street maintenance responsibilities will remain as before the project.

3.2 The project will include a rubberized asphalt overlay as a measure to attenuate noise for the local residents. As a result of the Noise Study prepared for the project, the project will also include a sound wall between Adams Street to Dune Palms Drive to be located on the south side of the road between the roadway and the residential properties. The sound wall is provided to mitigate projected noise levels that would exceed 65 dBA Community Noise Equivalent Level ("CNEL"). The sound wall height will not exceed eight feet as recommended per the Noise Study. The costs associated with the design and construction of a sound wall [is] considered valid project cost[s] and eligible for reimbursement by [the Coachella Valley Association of Governments] ("CVAG").

3.3 The County shall be required to submit a traffic control plan and roadway improvement plans, which are subject to the approval of the Public Works Director of the City. The traffic control plan will be part of an encroachment permit which may include additional measures to insure the safety of motorists during construction of the project and to cover City inspection costs.

3.4 The County shall be responsible for 100% of the design and construction costs for the "Project", Alternative [No.] 1 or variation thereof as mutually agreed to. The County shall also be solely responsible for repairing any damaged street or landscape improvements resulting from the Project.

3.5 All construction will be dependent on the improvements being eligible under CVAG's policies as outlined in Section IV, "Cost Determination/Expense Eligibility" of CVAG's Policies and Procedures Manual and CVAG agreeing to reimburse 75% of the cost to construct the access point. The remaining 25% cost shall be paid by the County.

[\*corrections made are placed in brackets]

3.6 The City shall maintain the median landscaping. The County and City shall pay equal shares of the cost for maintaining said landscaping. The County will pay the City for the County share of the cost upon receipt of a request for reimbursement by the City.

4. Indemnity and Release. The County agrees to defend, indemnify, and hold the City, its officers, officials, representatives, agents and employees (collectively, "Indemnified Parties") harmless from any and all claims, actions, liabilities, or legal proceedings (collectively, "Claims"), arising from any accident, loss or damage to persons or property happening or occurring as a proximate result of any work



undertaken by the County under this License and Indemnification Agreement, or which arises out of, relates to, or in any way involves the design, construction, installation, or use of the Improvements, including each and every design feature utilized in the Improvements and the driveway connections to Fred Waring Drive. Upon receipt of any Claim covered by this provision, the Indemnified Parties shall tender the Claim to the County, and the County shall provide the Indemnified Parties' defense in the matter, which includes reasonable attorneys' fees and costs, at no cost to Indemnified Parties. The Indemnified Parties shall fully cooperate in the defense of any such Claim.

The County agrees to promptly pay any and all final judgments or awards of damages, costs, or any other monetary awards against the Indemnified Parties covered by this provision.

This provision also shall not apply to Claims where the cause of injury or damage is determined by a final judgment or ruling, no longer subject to appeal, to be solely the result of City's negligence, willful misconduct or gross misconduct with regard to the maintenance of City roadways or median improvements within City limits. To the extent the City's negligence, willful misconduct or gross misconduct with regard to the maintenance of City roadways or median improvements within City limits is determined by a final judgment or ruling, no longer subject to appeal, to be only one of two or more proximate causes of said injury or damages, the County's defense and indemnity obligations to City shall be reduced on a pro rata basis in accordance with the determinations included in such final judgment or ruling.

The County's obligations under this provision shall commence from the date the construction of the Improvements commences and shall continue in perpetuity.

Upon request by the City, the County either shall add the Indemnified Parties as "additional insureds" to any and all of the County's insurance policies which might relate to the Improvements made to the Project Site or provide proof of self-insurance coverage for the Improvements made to the Project Site. However, the County agrees that the providing of said insurance coverage does not relieve the County of the obligations assumed within this provision.

## 5. Miscellaneous.

5.1 Attorneys' Fees. In the event of any dispute between the parties hereto involving this License and Indemnity Agreement, the prevailing party shall be entitled to recover, and the other party agrees to pay, all reasonable fees, expenses and costs, including but not limited to attorneys' fees.

5.2 Notices. Any notice which either party may desire to give to the other party must be in writing and shall be effective (i) when personally delivered by the other party or by messenger or courier; (ii) three (3) business days after deposit in the



United States mail, registered or certified; (iii) one (1) business day after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission (as evidenced by a computer generated receipt confirming a successful transmission), provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

If to City: City of La Quinta  
Frank J. Spevacek, City Manager  
78-495 Calle Tampico  
La Quinta, California 92253

With a copy to: Rutan & Tucker, LLP  
M. Katherine Jenson  
611 Anton Blvd., Suite 1400  
P.O. Box 1950  
Costa Mesa, CA 92628-1950

If to County: Riverside County Transportation Department  
Juan C. Perez, Director of Transportation  
4080 Lemon Street  
Riverside, CA 92501

With a Copy to : County of Riverside  
Clerk of the Board  
P.O. Box 1147  
Riverside, CA 92502-1147

If to CVAG: Coachella Valley Association of Governments  
Tom Kirk, Executive Director  
73-710 Fred Waring Drive, Suite #200  
Palm Desert, CA 92260

Either party may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified, and/or specify additional parties to be notified.

5.3 Successors and Assigns. This Agreement shall be binding on the parties hereto and their respective successors.

5.4 No Third Parties Benefited. This Agreement is made for the sole benefit and protection of the City and County, and their respective successors. No other person shall have any right of action or right to rely thereon.

5.5 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and all negotiations and agreements, statements or promises, including the First and Second Amendments and the MOU between the parties hereto or their agents with respect to this transaction are merged in this Permanent License and Indemnity Agreement, which alone expresses the parties' rights and obligations and if not contained herein shall not be binding or valid against either of the parties hereto.

5.6 Modification. Any amendments or modifications to this Agreement must be in writing and executed by all the parties.

5.7 Interpretation. The Parties hereto have negotiated this Lease at arm's length and have been advised by their respective attorneys, or if not represented by an attorney, represent that they had an opportunity to be so represented and no provision contained herein shall be construed against County solely because it prepared this Lease in its executed form. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

5.8 Governing Law and Venue. This Agreement is to be construed under the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside, State of California. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

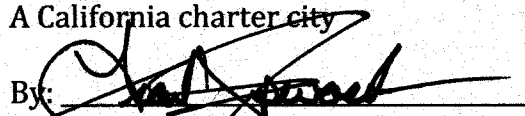
5.9 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions thereof.

5.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this 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.

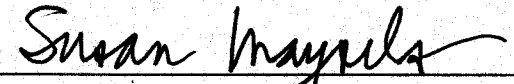
5.11 Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this Agreement to each other by facsimile, which facsimile signatures shall be binding. Any facsimile delivery of signatures shall be followed by the delivery of executed originals.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF LA QUINTA,  
A California charter city

By:   
By: Frank J. Spevacek  
Its: City Manager

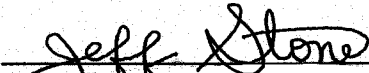
ATTEST:

By:   
Susan Maysels, City Clerk

APPROVED AS TO FORM:

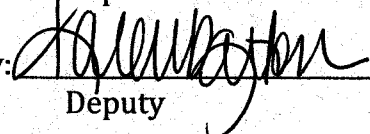
By: **SIGNED IN COUNTERPART**  
M. Katherine Jenson, City Attorney

COUNTY OF RIVERSIDE, a Political  
subdivision of the State of California

By:   
By: Jeff Stone, Chairman  
Its: Board of Supervisors

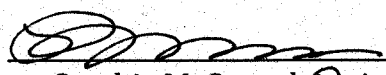
ATTEST:

Clerk of the Board  
Kecia Harper-Ihem

By:   
Deputy

APPROVED AS TO FORM:

PAMELA J WALLS, County Counsel

By:   
~~Synthia M. Gunzel~~ Patricia Munroe  
Deputy County Counsel

SIGNED IN COUNTERPART

5.11 Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this Agreement to each other by facsimile, which facsimile signatures shall be binding. Any facsimile delivery of signatures shall be followed by the delivery of executed originals.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF LA QUINTA,  
A California charter city

By: \_\_\_\_\_ **SIGNED IN COUNTERPART**  
By: Frank J. Spevacek  
Its: City Manager

ATTEST:

By: \_\_\_\_\_ **SIGNED IN COUNTERPART**  
Susan Maysels, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
M. Katherine Jensen, City Attorney

COUNTY OF RIVERSIDE, a Political  
subdivision of the State of California

By: \_\_\_\_\_  
By: Jeff Stone, Chairman  
Its: Board of Supervisors

ATTEST:

Clerk of the Board  
Kecia Harper-Ihem

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
PAMELA J WALLS, County Counsel

By: \_\_\_\_\_  
Synthia M. Gunzel  
Deputy County Counsel