

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

978A



FROM: TLMA – Transportation Department


SUBMITTAL DATE:
April 19, 2016

SUBJECT: Approval of the Transportation Uniform Mitigation Fee Improvement and Credit Agreement between the County of Riverside and Forestar Toscana Development Company for Tract Nos. 36593-2, 36593-3, 36593-4, 36593-5 and 36593-6. 1st District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Transportation Uniform Mitigation Fee (TUMF) Improvement and Credit Agreement between the County of Riverside (County) and Forestar Toscana Development Company (Developer) for Tract Nos. 36593-2, 36593-3, 36593-4, 36593-5 and 36593-6; and
2. Authorize the Chairman of the Board of Supervisors to execute the same.

FORM APPROVE BY: PATRICIA C. WILLIS Departmental Concurrence 6-2-16


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) |
|-----------------|----------------------|-------------------|-------------|---------------|---|
| COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 | |

SOURCE OF FUNDS: N/A **Budget Adjustment:** No
For Fiscal Year: 2016/2017

C.E.O. RECOMMENDATION:

APPROVE

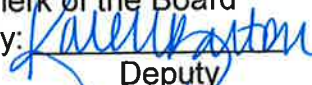
BY: Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: June 21, 2016
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

Prev. Agn. Ref.: District: 1 Agenda Number:

3-72

- 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 the Transportation Uniform Mitigation Fee Improvement and Credit Agreement between the County of Riverside and Forestar Toscana Development Company for Tract Nos. 36593-2, 36593-3, 36593-4, 36593-5 and 36593-6. 1st District; [\$0]

DATE: April 19, 2016

PAGE: 2 of 2

BACKGROUND:

Summary

Forestar Toscana Development Company (Developer) is developing a master planned community commonly known as Terramor, located adjacent to Temescal Canyon Road just north of Indian Truck Trail. The first phase of the Terramor development includes Tract numbers 36593-2, 36593-3, 36593-4, 36593-5 and 36593-6, which consists of 428 dwelling units within this master planned community.

Terramor is conditioned to construct improvements on Temescal Canyon Road, which includes widening of the existing two-lane roadway to a four-lane facility along the frontage of this development, two north bound lanes along their frontage and median and parkway improvements. This segment of Temescal Canyon Road is identified in the TUMF Regional System of Highways and Arterials (RSHA), and is among those facilities whose improvements are to be financed partly by the collection of TUMF. The proposed TUMF Improvement and Credit Agreement (Agreement) would allow Forestar Toscana Development Company to receive TUMF credits for the improvements to Temescal Canyon Road.

The Developer and the County desire to enter into this Agreement to provide a means by which the Developer's eligible costs for construction of certain road improvements are offset against the Developer's obligation to pay the applicable TUMF for the Project. The Developer would be eligible for maximum estimated amount of TUMF credits totaling approximately \$3,428,462. Upon completion of the improvements, acceptance by the County and verification of actual costs, the County of Riverside Transportation Department will determine the actual credits due to the Developer.

Impact on Residents and Businesses

The widening improvement along the Terramor Development will improve traffic flow and is a critical regional facility identified in the County General Plan.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

ATTACHMENTS:

Vicinity Map

Agreement

**IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This **IMPROVEMENT AND CREDIT AGREEMENT** ("Agreement") is entered into this 21st day of June, 2016, by and between the County of Riverside, a subdivision of the State of California ("AGENCY"), and Forestar Toscana Development Company, a Delaware corporation, with its principal place of business at 4590 MacArthur Boulevard, Suite 600, Newport Beach, California 92660 ("Developer"). AGENCY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Developer owns 202 acres of real property located within the AGENCY of Temescal Valley, California, which is more specifically described in the legal description set forth in Exhibit "A", attached hereto and incorporated herein by this reference ("Property");

WHEREAS, Developer has requested from AGENCY-certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as a total of 428 single family residential units in Track Nos. 36593-2 (83 units), 36593-3 (105 units), 36593-4 (105 units), 36593-5 (57 units), and 36593-6 (78 units) ("Project");

WHEREAS, the AGENCY is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and 17 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee ("TUMF") Program;

WHEREAS, as part of the TUMF Program, the AGENCY has adopted "Transportation Uniform Mitigation Fee Nexus Study: 2009 Update" ("2009 Nexus Study")

WHEREAS, as a condition to AGENCY's approval of the Project, AGENCY has required Developer to construct certain street and transportation system improvement(s) of regional importance ("TUMF Improvements");

WHEREAS, pursuant to the TUMF Program, the AGENCY requires Developer to pay the TUMF which covers the Developer's fair share of the costs to deliver those TUMF Improvements that help mitigate the Project's traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the "TUMF Network"), generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the TUMF Network;

WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2009 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, AGENCY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the AGENCY, (3) to provide a means by which the Developer's costs for project delivery of the TUMF Improvements and related right-of-ways is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and AGENCY 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 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as widening of Temescal Canyon Road from a two lane roadway to a four lane divided roadway, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the

work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY's acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY's acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY's issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY's demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the

amounts and under the terms set forth below (“Security”). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement (“Estimated Costs”). If AGENCY determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by AGENCY. Developer’s compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer’s indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than ten percent (10%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic’s lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY’s anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least “A” and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney’s fees and costs, incurred by AGENCY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY's approval and acceptance of the TUMF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of AGENCY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name AGENCY, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to AGENCY.

13.7 Insurer Rating. Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY pursuant to County Ordinance No. 824 as part of the TUMF Program is **THREE MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED FORTY FOUR DOLLARS** (\$3,797,644) ("TUMF Obligation"). This TUMF Obligation shall be initially determined under the nexus study and fee schedule in effect for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of County Ordinance No. 824.

14.3 Credit Offset Against TUMF Obligation. Pursuant to County Ordinance No. 824 and in consideration for Developer's obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the 2009 Nexus Study and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions").

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as "Estimated Credit". At no time will the Credit exceed the Developer's TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(1) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such

structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above. County's initial determinations pursuant to this section are set forth in the attached Exhibit "G".

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit "C". The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement ("Verified Costs"). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement ("Actual Credit"). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed ("TUMF Balance") and Developer shall pay the TUMF Balance in accordance with County Ordinance No. 824 to fully satisfy the TUMF Obligation (see Exhibit "F" - Example "A").

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit "F" - Example "B").

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY's Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF

Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with County Ordinance No. 824 (see Exhibit "F" - Example C).

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between AGENCY and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee,

commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: County of Riverside
Transportation Department
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Attn: Patricia Romo
Assistant Director of Transportation
Phone No. (951) 955-6747
Fax No. (951) 955-3198

To Developer: Forestar Toscana Development
c/o Forestar Management, LLC
4590 MacArthur Boulevard, Suite 600
Newport Beach, CA 92660
Attn: Steven Cameron
Phone No. (949) 748-6714
Fax No. (949) 861-3333

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.


15.16 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

[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 & Land
Management

APPROVED AS TO FORM:

By: 

County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:


By:  Date: JUN 21 2016
JOHN J. BENOIT
Chairman, County Board of Supervisors

ATTEST:

By:  Date: JUN 21 2016
Kecia Harper-Ihem
Clerk of the Board

DEVELOPER

Forestar Toscana Development Company, a
Delaware corporation

By: 

Stephen C. Cameron
Printed Name
President
Title

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)

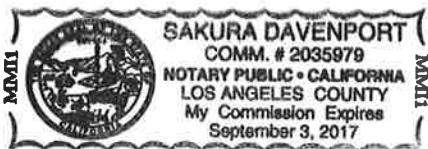
On April 12th, 2016 before me, Sakura Davenport, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stephen C. Cameron
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 Sakura Davenport
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Improvement and
Title or Type of Document: Credit/Reimbursement Agreement Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[ATTACH BEHIND THIS PAGE]

EXHIBIT "A

In the County of Riverside, State of California:

Being a portion of Parcel 1 of Lot Line Adjustment No. 5498 per document recorded December 11, 2014 as Document No. 2014-0474997 of Official Records and portions of the Southwest quarter and the Southeast quarter of Section 1, Township 5 South, Range 6 West, S.B.M., described as follows:

Commencing at the north quarter corner of said Section 1 as shown on Record of Survey filed in Book 143, pages 16 through 19, inclusive, of Record of Survey, records of said Riverside County;

Thence South $0^{\circ}51'34''$ West along the quarter section line, a distance of 1276.44 feet to the True Point of Beginning, said point being a point in a non-tangent curve, concave northeasterly and having a radius of 1539.00 feet, a radial line to said point bears South $20^{\circ}37'08''$ West;

Thence northwesterly along said curve, through a central angle of $9^{\circ}46'22''$, an arc length of 262.50 feet;

Thence tangent to last said curve, North $59^{\circ}36'30''$ West, a distance of 61.50 feet to the beginning of a tangent curve, concave southerly and having a radius of 1461.00 feet;

Thence westerly along said curve, through a central angle of $35^{\circ}50'05''$, an arc length of 913.76 feet;

Thence tangent to last said curve, South $84^{\circ}33'25''$ West, a distance of 328.93 feet to the beginning of a tangent curve, concave southeasterly and having a radius of 612.00 feet;

Thence southwesterly along said curve, through a central angle of $26^{\circ}09'16''$, an arc length of 279.37 feet;

Thence non-tangent to last said curve, South $17^{\circ}56'43''$ West, a distance of 32.72 feet to a point in a non-tangent curve, concave northeasterly and having a radius of 25.00 feet, a radial line to said point bears South $53^{\circ}16'29''$ West;

Thence southeasterly along said curve, through a central angle of $42^{\circ}57'16''$, an arc length of 18.74 feet;

Thence tangent to last said curve, South $79^{\circ}40'47''$ East, a distance of 1.22 feet to the beginning of a tangent curve, concave southwesterly and having a radius of 48.00 feet;

Thence southeasterly along said curve, through a central angle of $63^{\circ}05'12''$, an arc length of 52.85 feet to a point of reverse curvature with a curve concave northeasterly and having a radius of 15.00 feet, a radial line to said point bears North $73^{\circ}24'24''$ East;

Thence southeasterly along said curve, through a central angle of $26^{\circ}01'59''$, an arc length of 6.82 feet;

Thence tangent to last said curve, South $42^{\circ}37'34''$ East, a distance of 16.75 feet;

Thence South $84^{\circ}07'42''$ East, a distance of 19.88 feet;

Thence South $35^{\circ}37'50''$ East, a distance of 56.00 feet to a point in a non-tangent curve, concave southeasterly and having a radius of 397.00 feet, a radial line to said point bears North $35^{\circ}37'50''$ West;

Thence southwesterly along said curve, through a central angle of $13^{\circ}59'29''$, an arc length of 96.95 feet;

Thence non-tangent to last said curve, North $49^{\circ}37'19''$ West, a distance of 56.00 feet;

Thence North $1^{\circ}07'27''$ West, a distance of 19.88 feet;

Thence North $42^{\circ}37'34''$ West, a distance of 18.42 feet to the beginning of a tangent curve, concave southwesterly and having a radius of 15.00 feet;

Thence northwesterly along said curve, through a central angle of $24^{\circ}21'31''$, an arc length of 6.38 feet to a point of reverse curvature with a curve concave northeasterly and having a radius of 48.00 feet, a radial line to said point bears South $23^{\circ}00'55''$ West;

Thence northwesterly along said curve, through a central angle of $66^{\circ}27'13''$, an arc length of 55.67 feet;

Thence non-tangent to last said curve, South $53^{\circ}56'20''$ West, a distance of 26.58 feet;

Thence South $35^{\circ}40'23''$ West, a distance of 50.00 feet;

Thence South $31^{\circ}32'46''$ West, a distance of 58.42 feet;

Thence South $30^{\circ}54'59''$ West, a distance of 58.50 feet;

Thence South $30^{\circ}10'35''$ West, a distance of 45.06 feet;

Thence South $7^{\circ}31'01''$ West, a distance of 71.42 feet;

Thence South $10^{\circ}38'09''$ West, a distance of 57.93 feet;

Thence South $3^{\circ}35'01''$ West, a distance of 58.06 feet;

Thence South 3°48'00" East, a distance of 58.11 feet;

Thence South 12°56'37" East, a distance 59.36 feet;

Thence South 19°23'11" East, a distance of 87.04 feet;

Thence South 25°12'26" East, a distance of 59.60 feet;

Thence South 29°26'11" East, a distance of 107.97 feet;

Thence South 22°05'40" East, a distance of 64.76 feet;

Thence South 28°54'26" East, a distance of 63.81 feet;

Thence South 34°23'19" East, a distance of 64.22 feet;

Thence South 33°14'48" East, a distance of 64.13 feet;

Thence South 25°59'03" East, a distance of 63.13 feet;

Thence South 35°20'29" East, a distance of 73.78 feet to a point in a non-tangent curve, concave northeasterly and having a radius of 420.91 feet, a radial line to said point bears South 52°59'02" West;

Thence southeasterly along said curve, through a central angle of 41°16'22", an arc length of 303.20 feet;

Thence non-tangent to last said curve, South 79°42'48" East, a distance of 68.07 feet;

Thence South 83°26'15" East, a distance of 62.84 feet;

Thence South 67°29'54" East, a distance of 74.67 feet;

Thence North 72°55'35" East, a distance of 20.25 feet to a point in a non-tangent curve, concave northeasterly and having a radius of 669.00 feet, a radial line to said point bears South 72°54'02" West;

Thence southeasterly along said curve, through a central angle of 14°03'45", an arc length of 164.20 feet;

Thence non-tangent to last said curve, South 17°08'17" East, a distance of 66.15 feet;

Thence South 39°09'54" East, a distance of 64.25 feet;

Thence South 61°33'21" East, a distance of 66.25 feet to a point in a non-tangent curve, concave northeasterly and having a radius of 669.00 feet, a radial line to said point bears South 42°48'02" West;

Thence southeasterly along said curve, through a central angle of 17°25'15", an arc length of 203.41 feet;

Thence non-tangent to last said curve, South 65°22'42" East, a distance of 43.36 feet;

Thence South 64°37'42" East, a distance of 206.24 feet;

Thence South 61°00'05" East, a distance of 72.42 feet;

Thence South 59°53'01" East, a distance of 456.87 feet;

Thence South 50°45'06" East, a distance of 55.71 feet;

Thence South 59°24'31" East, a distance of 55.00 feet;

Thence South 59°40'39" East, a distance of 54.68 feet;

Thence North 88°22'05" East, a distance of 93.76 feet;

Thence North 51°02'42" East, a distance of 44.70 feet;

Thence North 43°42'24" East, a distance of 124.69 feet;

Thence North 36°00'47" East, a distance of 110.74 feet;

Thence North 44°43'01" East, a distance of 55.04 feet;

Thence North 42°37'25" East, a distance of 92.21 feet to a point in a non-tangent curve, concave southwesterly and having a radius of 200.00 feet, a radial line to said point bears North 30°38'58" East;

Thence southeasterly along said curve, through a central angle of 7°40'39", an arc length of 26.80 feet;

Thence tangent to last said curve, South 52°04'07" East, a distance of 37.84 feet to the beginning of a tangent curve, concave northerly and having a radius of 48.00 feet;

Thence easterly along said curve, through a central angle of $39^{\circ}31'14''$, an arc length of 33.11 feet;

Thence tangent to last said curve, North $88^{\circ}24'35''$ East, a distance of 10.67 feet to the beginning of a tangent curve, concave southerly and having a radius of 25.00 feet;

Thence easterly along said curve, through a central angle of $35^{\circ}56'26''$, an arc length of 15.68 feet;

Thence non-tangent to last said curve, North $34^{\circ}21'00''$ East, a distance of 28.00 feet;

Thence North $55^{\circ}39'00''$ West, a distance of 1.41 feet

Thence North $34^{\circ}21'00''$ East, a distance of 28.00 feet;

Thence North $73^{\circ}02'42''$ East, a distance of 30.32 feet to a point in a non-tangent curve, concave southeasterly and having a radius of 608.00 feet, a radial line to said point bears North $51^{\circ}36'34''$ West;

Thence northeasterly along said curve, through a central angle of $18^{\circ}24'23''$, an arc length of 195.32 feet;

Thence tangent to last said curve, North $56^{\circ}47'49''$ East, a distance of 442.61 feet to the beginning of a tangent curve, concave northwesterly and having a radius of 612.00 feet;

Thence northeasterly along said curve, through a central angle of $41^{\circ}37'18''$, an arc length of 444.58 feet;

Thence non-tangent to last said curve, North $24^{\circ}12'55''$ West, a distance of 32.29 feet to a point in a non-tangent curve, concave southerly and having a radius of 25.00 feet, a radial line to said point bears North $11^{\circ}45'16''$ East;

Thence westerly along said curve, through a central angle of $30^{\circ}46'03''$, an arc length of 13.42 feet;

Thence tangent to last said curve, South $70^{\circ}59'13''$ West, a distance of 19.01 feet to the beginning of a tangent curve, concave northerly and having a radius of 48.00 feet;

Thence westerly along said curve, through a central angle of $55^{\circ}58'35''$, an arc length of 46.89 feet to a point of reverse curvature with a curve, concave southwesterly and having a radius of 15.00 feet, a radial line to said point bears South $36^{\circ}57'48''$ West;

Thence northwesterly along said curve, through a central angle of $25^{\circ}12'32''$, an arc length of 6.60 feet;

Thence tangent to last said curve, North $78^{\circ}14'44''$ West, a distance of 32.83 feet;

Thence South $60^{\circ}47'01''$ West, a distance of 19.67 feet;

Thence North $70^{\circ}11'13''$ West, a distance of 56.00 feet to a point in a non-tangent curve, concave westerly and having a radius of 447.00 feet, a radial line to said point bears South $70^{\circ}11'13''$ East;

Thence northerly along said curve, through a central angle of $16^{\circ}14'38''$, an arc length of 126.73 feet;

Thence non-tangent to last said curve, South $86^{\circ}25'51''$ East, a distance of 56.00 feet to a point in a non-tangent curve, concave westerly and having a radius of 503.00 feet, a radial line to said point bears South $86^{\circ}25'51''$ East;

Thence southerly along said curve, through a central angle of $3^{\circ}36'10''$, an arc length of 31.63 feet;

Thence non-tangent to last said curve, South $35^{\circ}32'12''$ East, a distance of 20.35 feet;

Thence South $78^{\circ}14'44''$ East, a distance of 29.37 feet to the beginning of a tangent curve, concave northerly and having a radius of 15.00 feet;

Thence easterly along said curve, through a central angle of $25^{\circ}12'32''$, an arc length of 6.60 feet to a point of reverse curvature with a curve concave southwesterly and having a radius of 48.00 feet, a radial line to said point bears North $13^{\circ}27'15''$ West;

Thence southeasterly along said curve, through a central angle of $64^{\circ}24'58''$, an arc length of 53.97 feet;

Thence tangent to last said curve, South $39^{\circ}02'17''$ East, a distance of 5.64 feet to the beginning of a tangent curve, concave northeasterly and having a radius of 25.00 feet;

Thence southeasterly along said curve, through a central angle of $39^{\circ}12'26''$, an arc length of 17.11 feet;

Thence non-tangent to last said curve, North $46^{\circ}26'11''$ East, a distance of 33.15 feet to a point in a non-tangent curve, concave westerly and having a radius of 612.00 feet, a radial line to said point bears South $85^{\circ}05'06''$ East;

Thence northerly along said curve, through a central angle of $23^{\circ}15'13''$, an arc length of 248.38 feet;

Thence tangent to last said curve, North $18^{\circ}20'19''$ West, a distance of 155.67 feet;

Thence North $28^{\circ}00'30''$ West, a distance of 78.90 feet;

Thence North $18^{\circ}37'52''$ West, a distance of 69.67 feet to a point in a non-tangent curve, concave easterly and having a radius of 230.00 feet, a radial line to said point bears South $68^{\circ}15'38''$ West;

Thence northerly along said curve, through a central angle of $42^{\circ}08'09''$, an arc length of 169.14 feet;

Thence non-tangent to last said curve, South $86^{\circ}55'34''$ West, a distance of 427.83 feet to the beginning of a tangent curve, concave northerly and having a radius of 688.00 feet;

Thence westerly along said curve, through a central angle of $22^{\circ}29'08''$, an arc length of 270.00 feet;

Thence tangent to last said curve, North $70^{\circ}35'19''$ West, a distance of 491.66 feet to the beginning of a tangent curve, concave northeasterly and having a radius of 1539.00 feet;

Thence northwesterly along said curve, through a central angle of $1^{\circ}12'27''$, an arc length of 32.43 feet to the True Point of Beginning.

Containing 115.71 acres, more or less.

EXHIBIT "B"

FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

EXHIBIT B

FAITHFUL PERFORMANCE BOND
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
(Government Code Section 66499.1)

| | | | |
|---------------------------|------------------------|------------------|----------------------|
| FOR: Streets and Drainage | \$ <u>9,779,500.00</u> | Tract/Parcel Map | <u>MS 4279</u> |
| Water System | \$ _____ | Bond No. | <u>1019950</u> |
| Sewer System | \$ _____ | Premium | <u>\$ 176,031.00</u> |

| | | | |
|------------|----------------------------------|------------|---|
| Surety | <u>Lexon Insurance Company</u> | Principal | <u>Forestar Toscana Development Company</u> |
| Address | <u>256 Jackson Meadows Drive</u> | Address | <u>4590 MacArthur Blvd., Suite 600</u> |
| City/State | <u>Hermitage, TN</u> | City/State | <u>Newport Beach, CA</u> |
| Zip | <u>37076</u> | Zip | <u>92660</u> |
| Phone | <u>615-553-9500</u> | Phone | <u>949-748-6714</u> |

WHEREAS, the County of Riverside, State of California, and Forestar Toscana Development Company (hereinafter designated as "principal") have entered into, or are about to enter into, the attached agreement(s) whereby principal agrees to install and complete the above designated public improvements relating to (Tract/Parcel) MS 4279 (Tracts 36643, 36593, 36593-1 thru -6), which agreement(s) is/are hereby referred to and made a part hereof; and,

WHEREAS, said principal is required under the terms of said agreement(s) to furnish bond(s) for the faithful performance of said agreement(s);

NOW, THEREFORE, we the principal and Lexon Insurance Company, as surety, are held and firmly bound unto the County of Riverside in the penal sum of NINE MILLION SEVEN HUNDRED SEVENTY-NINE THOUSAND FIVE HUNDRED AND no/100 Dollars (\$9,779,500.00) lawful money of the United States, for the payment of which sum will and truly be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the County of Riverside, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

FAITHFUL PERFORMANCE BOND

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of this agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further stipulates and agrees that the provisions of Section 2845 of the Civil Code and commencement of construction are not conditions precedent to surety's obligations hereunder and are hereby waived by surety.

When the work covered by the agreement is complete, the County of Riverside will accept the work and thereupon, the amount of the obligation of this bond is reduced by 90% with the remaining 10% held as security for the one-year maintenance period provided for in the agreements(s).

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on May 19, 2015.

NAME OF PRINCIPAL: Forestar Toscana Development Company

AUTHORIZED SIGNATURE(S): By: *S.C. Cameron*
STEPHEN C. CAMERON Title, President

Brian Woods
BRIAN WOODS Title VICE PRESIDENT

Title

(IF CORPORATION, AFFIX SEAL)

NAME OF SURETY: Lexon Insurance Company

AUTHORIZED SIGNATURE: *[Signature]*
Its Attorney-in-Fact Janina Monroe - Title

(IF CORPORATION, AFFIX SEAL)

ATTACH NOTARIAL ACKNOWLEDGMENT OF SIGNATURES OF PRINCIPAL AND ATTORNEY-IN-FACT.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On June 15th, 2015 before me, Sakura Davenport, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Stephen C. Cameron and Brian Woods
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 Sakura Davenport
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Faithful Perf. Bond
Title or Type of Document: Streets and Drainage Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Orange }

On MAY 19 2015 before me, M. Barreras, Notary Public
(Here insert name and title of the officer)

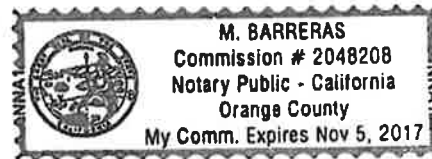
personally appeared Janina Monroe
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~ and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ 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.

M. Barreras
Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
- _____ (Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple

POWER OF ATTORNEY

LX-251421

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Paul Boucher, Janina Monroe, Dennis Langer, Timothy Noonan, Michelle Haase its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 10,000,000.00, Ten Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY



BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY L. TAYLOR Notary Public- State of Tennessee Davidson County Mv Commission Expires 01-09-16

BY [Signature] Amy L. Taylor Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

MAY 19 2015

Signed and Seal at Mount Juliet, Tennessee this _____ Day of _____, 20_____.



BY [Signature] Andrew Smith Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

MATERIAL AND LABOR BOND
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
(Government Code Section 66499.1)

FOR: Streets and Drainage \$ 4,889,750.00 Tract/Parcel Map MS 4279
Water System \$ _____ Bond No. 1019950
Sewer System \$ _____ Premium Included with Performance Bond

| | |
|--|---|
| Surety <u>Lexon Insurance Company</u> | Principal <u>Forestar Toscana Development Co.</u> |
| Address <u>256 Jackson Meadows Drive</u> | Address <u>4590 MacArthur Blvd., Suite 600</u> |
| City/State <u>Hermitage, TN</u> | City/State <u>Newport Beach, CA</u> |
| Zip <u>37076</u> | Zip <u>92660</u> |
| Phone <u>615-553-9500</u> | Phone <u>949-748-6714</u> |

WHEREAS, the County of Riverside, State of California, and Forestar Toscana Development Company (hereinafter designated as "principal") have entered into, or are about to enter into, the attached agreement(s) whereby principal agrees to install and complete the above designated public improvements relating to (Tract/Parcel) MS 4279 (Tracts 36643, 36593, 36593-1 thru -6), which agreement(s) is/are hereby referred to and made a part hereof; and,

WHEREAS, under the terms of said agreement, principal is required, before entering upon the performance of the work, to file a good and sufficient payment bond with the County of Riverside to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California:

NOW, THEREFORE, said principal and the undersigned, as corporate surety, are held firmly unto the County of Riverside and all contractors, subcontractors, laborers, material persons and other persons employed in the performance of said Civil Code in the sum of FOUR MILLION EIGHT HUNDRED EIGHTY NINE THOUSAND SEVEN HUNDRED AND FIFTY AND no/100 Dollars (\$ 4,889,750.00) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the County in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed upon that this bond shall inure to the benefit of any and all persons, companies and corporations entitles to full claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.


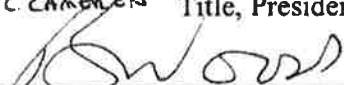
Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

MATERIAL AND LABOR BOND

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of this agreement or to the specifications accompanying the same shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition. Surety further stipulates and agrees that the provisions of Section 2845 of the Civil Code are not a condition precedent to surety's obligations hereunder and are hereby waived by surety.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named, on May 19, 2015.

NAME OF PRINCIPAL: Forestar Toscana Development Company

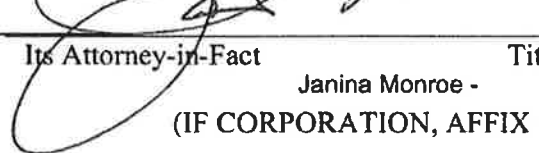
AUTHORIZED SIGNATURE(S): By: 
STEPHEN C. CAMERON Title, President

BRIAN WOODS Title VICE PRESIDENT

Title

(IF CORPORATION, AFFIX SEAL)

NAME OF SURETY:

Lexon Insurance Company

AUTHORIZED SIGNATURE: 
Its Attorney-in-Fact Title
Janina Monroe -
(IF CORPORATION, AFFIX SEAL.)

ATTACH NOTARIAL ACKNOWLEDGMENT OF SIGNATURES OF PRINCIPAL AND ATTORNEY-IN-FACT.

Revised 11/15/07

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On June 1st, 2015 before me, Sakura Davenport, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Stephen C. Cameron and Brian Woods
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 Sakura Davenport
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Material and Labour Bond
Title or Type of Document: Streets and Drainage Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)
Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Orange)

On MAY 19 2015 before me, M. Barreras, Notary Public
(Here insert name and title of the officer)

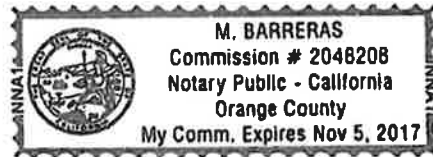
personally appeared Janina Monroe
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.


 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ✦ Indicate title or type of attached document, number of pages and date.
 - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple

POWER OF ATTORNEY

LX-251422

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Paul Boucher, Janina Monroe, Dennis Langer, Timothy Noonan, Michelle Haase its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 5,000,000.00, Five Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY



BY

Signature of David E. Campbell, President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY L. TAYLOR
Notary Public- State of Tennessee
Davidson County
Mv Commission Expires 01-09-16

BY

Signature of Amy L. Taylor, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this MAY 19 2015 Day of _____, 20_____.



BY

Signature of Andrew Smith, Assistant Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

EXHIBIT "C"

DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist AGENCY in determining the Construction Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer's civil engineer's cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT "D"

**REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into this ___ day of _____, 20___, by and between the [INSERT "City" OR "County"] of _____, **[**INSERT "a California municipal corporation" FOR CITY OR "a subdivision of the State of California" FOR COUNTY**]** ("AGENCY"), and _____, a California **[**INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity**]**, with its principal place of business at **[**ENTER ADDRESS**]** ("Developer"). AGENCY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, AGENCY 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 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY 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 AGENCY 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, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, (insert appropriate reference for city or county), 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, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and transmitting the Reimbursement Amount 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 14.3, 14.4, and 14.5 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 AGENCY 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 is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY 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. AGENCY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY 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 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]

EXHIBIT "E"

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
 - a. Prepare a separate bid package for the TUMF Improvements.
 - b. The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
 - c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
 - d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY's requirements and guidelines.
 - e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.
2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer ("Agreement"), Developer shall provide the AGENCY and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.
3. Prior to the AGENCY's acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the AGENCY's inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.
 - d. AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
 - e. Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.
 - f. Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.

- g. Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:
- i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.
 - ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee.

EXHIBIT "F"

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units:
200 SF dwelling units @ \$6,650 / dwelling unit = \$1,330,000 in fees (TUMF Obligation)

Example A: "TUMF BALANCE"

CREDIT

| | | |
|---|-------------|--------------------|
| TUMF Obligation: | \$1,330,000 | |
| Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less | | <u>\$1,500,000</u> |
| Potential Reimbursement: | (\$170,000) | |

RECONCILIATION

| | | |
|---------------------------------|--------------------|------------------|
| TUMF Obligation: | \$1,330,000 | |
| Actual Credit: | <u>\$1,200,000</u> | |
| TUMF Balance (Payment to TUMF): | | \$130,000 |

Example B: "REIMBURSEMENT"

CREDIT

| | | |
|---|-------------|--------------------|
| TUMF Obligation: | \$1,330,000 | |
| Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less | | <u>\$1,500,000</u> |
| Potential Reimbursement: | (\$170,000) | |

RECONCILIATION

| | | |
|---|--------------------|--------------------|
| TUMF Obligation: | \$1,330,000 | |
| Actual Credit: | <u>\$1,500,000</u> | |
| Reimbursement Agreement with Developer (Based on Priority Ranking): | | (\$170,000) |

Example C: "TUMF OVERPAYMENT"

CREDIT

| | | |
|---|-------------|--------------------|
| TUMF Obligation: | \$1,330,000 | |
| Estimated Credit: Bid (\$1,200,000) or unit Cost Assumption (\$1,500,000) whichever is less | | <u>\$1,200,000</u> |
| Remaining TUMF Obligation: | \$130,000 | |
| Prorated Fee: \$130,000 / 200 du = | \$650 / du | |

RECONCILIATION

| | | |
|---|-------------|--------------------|
| Actual Credit: | \$1,300,000 | |
| TUMF payments from Developer (\$650 per unit x 200 units) | | <u>\$130,000</u> |
| Actual Credit plus TUMF Payment | \$1,430,000 | |
| TUMF Obligation: | \$1,330,000 | |
| Actual Credit plus TUMF Payment | | <u>\$1,430,000</u> |
| TUMF Overpayment (Refund to Developer): | | (\$100,000) |

EXHIBIT "G"

Estimated TUMF Credit / Reimbursement Summary

Forestar Toscana Development Company
Tracts 36593-2, 36593-3, 36593-4, 36593-5, 36593-6
IP150006, IP150007, IP150008, IP150009, IP150010

List of Eligible Streets/Facilities under the TUMF Network:

Temescal Canyon Road (Park Canyon to Indian Truck Trail)

TUMF Credit Cost Factors:

| | | |
|---|----|-----------|
| Paid TUMF (see next page for details) | \$ | - |
| Estimated TUMF Obligation (see next page for details) | \$ | 3,797,644 |
| TUMF Unit Cost Assumptions (see next page for details) | \$ | 3,428,462 |
| Improvement Costs (Engineer's Estimate) (see below for details) | \$ | 3,634,055 |

Improvement Costs Breakdown

| | | |
|---|----|-----------|
| Street Improvement Construction Costs (Low Bid) | \$ | 2,114,073 |
| Right of Way Costs | \$ | 516,954 |
| Bridge Construction Costs (Engineer's Estimate) | \$ | - |
| Planning, Engineering, Geotechnical Services | \$ | 1,003,028 |
| Improvement Costs Total | \$ | 3,634,055 |

Estimated TUMF Credit:

| | | |
|---|----|--------------------|
| Estimated Credit (Lesser of Obligation, Bid Amount, or Unit Cost Assumptions) | \$ | 3,428,462 |
| Estimated number of remaining units | | 428 |
| Prorated Credit per each remaining unit (up to max TUMF fee per unit) | \$ | 8,010 |
| Estimated Credit to be applied to remaining units | | \$3,428,462 |

TUMF Overpayment / Refund:

| | | |
|---|----|------------|
| Estimated TUMF Obligation | \$ | 3,797,644 |
| Estimated Credit amount + Paid TUMF amount | \$ | 3,428,462 |
| Estimated Refund (Credit + Paid TUMF amount that exceeds Obligation amount) | | \$0 |

TUMF Reimbursement:

| | | |
|---|----|------------|
| Estimated TUMF Obligation | \$ | 3,797,644 |
| Estimated Cost (Lesser of Bid Amount or Unit Cost Assumptions) | \$ | 3,428,462 |
| Estimated TUMF Reimbursement (Cost exceeding Obligation amount) | | \$0 |

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

Forestar Toscana Development Company
Tracts 36593-2, 36593-3, 36593-4, 36593-5, 36593-6
IP150006, IP150007, IP150008, IP150009, IP150010

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 36593-2) | \$ 8,873 | 83 | \$ 736,459 |
| Single Family Residential (TR 36593-3) | \$ 8,873 | 105 | \$ 931,665 |
| Single Family Residential (TR 36593-4) | \$ 8,873 | 105 | \$ 931,665 |
| Single Family Residential (TR 36593-5) | \$ 8,873 | 57 | \$ 505,761 |
| Single Family Residential (TR 36593-6) | \$ 8,873 | 78 | \$ 692,094 |
| | Estimated Subtotal | 428 | \$ 3,797,644 |
| | Obligation Total | 428 | \$ 3,797,644 |

TUMF UNIT COST ASSUMPTION CALCULATION (2009 Unit Cost Assumption)

| TUMF Network Road Segment applicable to Proposed Improvements | Cost Item | Amount |
|--|---------------------------------|---------------|
| Temescal Canyon Rd, Park Canyon to Indian Truck Trail | | |
| Network Distance: 2.55 miles | Road Const | \$ 3,877,000 |
| Existing Lanes: 2 | ROW/Utilities | \$ 1,207,000 |
| Increase in Lanes: 2 | Planning (10%) | \$ 388,000 |
| | Engring (25%) | \$ 969,000 |
| | Conting (10%) | \$ 508,000 |
| | Network Road Segment Cost Est | \$ 6,949,000 |
| | Network Unit Cost per Lane mile | \$ 1,362,549 |
| | Network Unit Cost per Lane foot | \$ 258 |

Road Improvement Cost Estimate (based on Network Unit Cost per Lane foot)

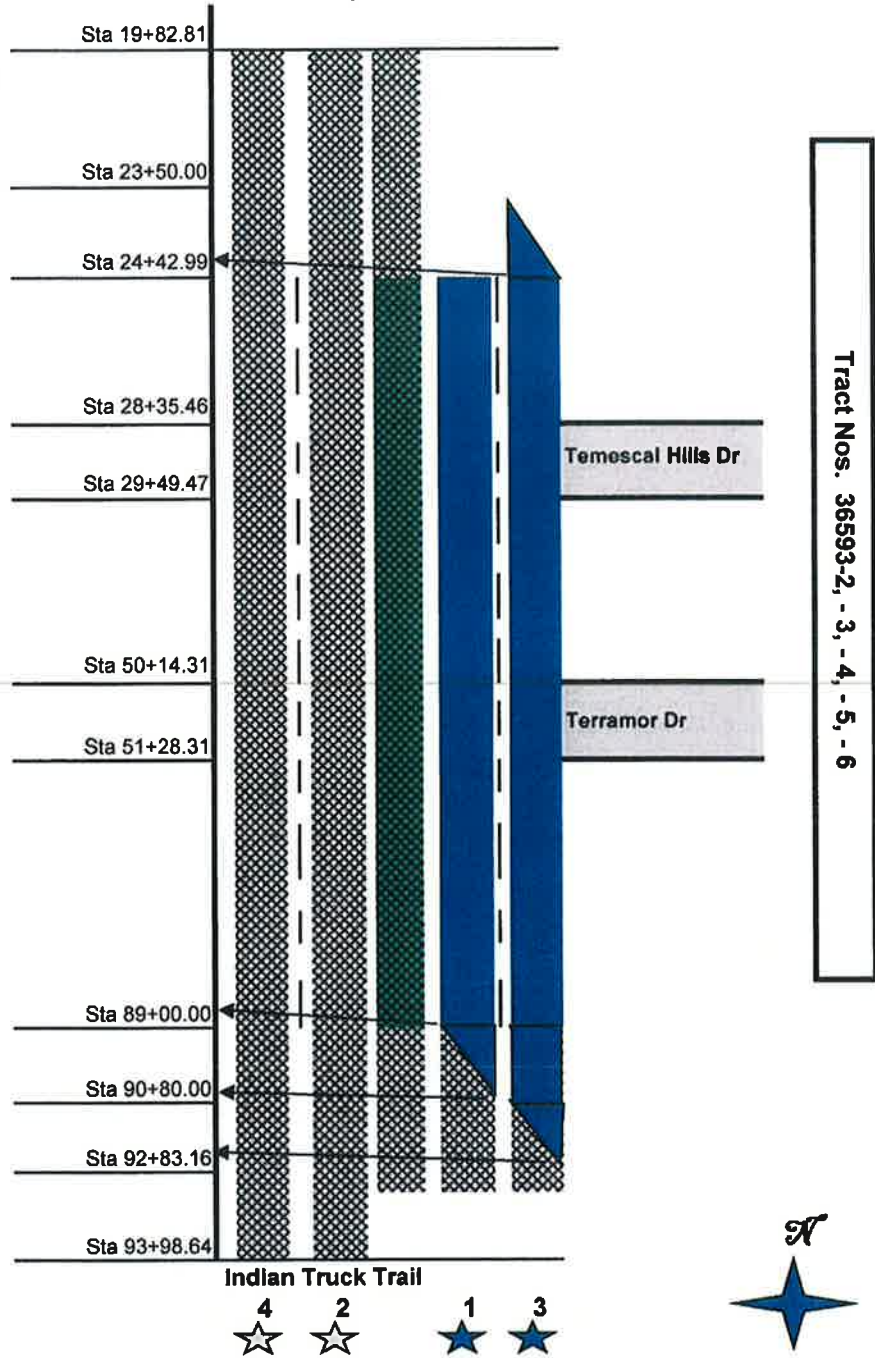
| Lane | Construction Limits (Sta. to Sta.) | Linear Feet | Amount |
|-------------|--|--------------------|---------------|
| 1 | 24+42.99 89+00.00 | 6,457.01 | \$ 1,666,286 |
| 1 | 89+00.00 90+80.00 North Taper (1/2 Credit 180' ² = 90') | 90.00 | \$ 23,225 |
| 3 | 24+42.99 90+80.00 | 6,637.01 | \$ 1,712,737 |
| 3 | 90+80.00 92+83.16 North Taper (1/2 Credit 203' ² = 101.58') | 101.58 | \$ 26,214 |
| | Road Subtotal | 13,285.60 | \$ 3,428,462 |

| | |
|-------------------|---------------------|
| TUMF TOTAL | \$ 3,428,462 |
|-------------------|---------------------|

| | |
|--|---------------------|
| TOTAL TUMF UNIT COST ASSUMPTION FOR ELIGIBLE IMPROVEMENTS | \$ 3,428,462 |
|--|---------------------|

Temescal Canyon Road

Mayhew Road



- ★ Lanes 1 and 3 are new roadways covered under TUMF
- ☆ Lanes 2 and 4 are existing roadways not covered under TUMF
- Median not covered under TUMF

EXHIBIT G-3