



TRIUNFO SANITATION DISTRICT

A PUBLIC AGENCY

April 21, 2011

Board of Directors
Triunfo Sanitation District
Ventura County, California

RANCHO SIMI RECREATION AND PARKS DISTRICT PROPERTY TRANSFER AGREEMENT

Summary

The construction of the Oak Canyon Reservoir in Oak Park requires a property transfer agreement with the Rancho Simi Recreation and Parks District (RSRPD) to provide the Site A7b for the tank installation. General Counsel provided a final version to RSRPD which was presented to their board and accepted on March 17, 2011. Once executed by the Triunfo Sanitation District (Triunfo), the property transfer of Site A7b will be complete and construction can commence.

This agreement includes the property transfer of the current Conifer Tank site back to RSRPD once the Oak Canyon Reservoir is complete and the Conifer tank is decommissioned. Staff recommends the Board approve the property transfer agreement with RSRPD.

Background

The location of the to-be-constructed Oak Canyon Reservoir (Site A7b) requires a property transfer agreement with RSRPD to obtain the rights and easements for the site. Per an October 2, 1975, agreement between Rancho Simi Recreation and Parks District and the Metropolitan Development Corporation, that requires RSRPD to make up to six (6) sites available in providing water services to the community of Oak Park. This agreement allows for the placement of the water tanks, together with securing such rights of ingress and egress as is necessary for these purposes.

TSD, as successor to Metropolitan Water Company, has the authority to request and accept a deed to Site A7b, and RSRPD is obligated to deed the site to Triunfo for the construction of the Oak Canyon Reservoir in order to provide a water storage facility to service the community of Oak Park. As part of this agreement, RSRPD grants to Triunfo: (1) land sufficient for the water tank site; (2) a permanent easement for the construction, operation and maintenance of a utility service road, and for utility lines; and (3) a temporary construction easement for the purposes of installing the water tank.

Item 71

Following review and coordination among staff, General Counsel, and RSRPD, an agreement was presented to the RSRPD Board and approval granted on March 17, 2011. With their approval, RSRPD agrees to transfer the rights for Site A7b to Triunfo for the new tank construction. As part of the agreement, Triunfo and RSRPD have agreed that Triunfo shall deed the current Conifer Tank site back to RSRPD as public parkland after removal of the Conifer Tank and restoration of the site as detailed in the Final Environmental Impact Report (FEIR).

Key Provisions

The Agreement provides that within thirty (30) days of Triunfo executing the Agreement:

1. Triunfo execute and deliver to RSRPD an Irrevocable Offer of Dedication dedicating the Conifer Tank site and certain access road easements.
2. RSRPD deed to Triunfo certain real property required for the construction of the Oak Canyon Reservoir, aka "A7 Water Tank."
3. RSRPD grant to Triunfo certain permanent and temporary easements required by Triunfo for the construction of the A7 Water Tank.

The Agreement also provides that within sixty (days) of initiation of water service at the A7 Water Tank:

1. Triunfo quitclaim to RSRPD the Conifer Water Tank site.
2. Triunfo provide RSRPD and documentation confirming that cell carriers located at the Conifer Tank site have obtained rights from applicable HOAs to access the Conifer Tank site.
3. Triunfo demolish the Conifer Tank and restore the Conifer Tank Site as provided in the FEIR. (Note: The Agreement allows the parties, under specified conditions, to alter the sixty (60) day time limit for demolition and restoration.)

Upon completion of the demolition of the Conifer Tank and construction of the new wireless telecommunications facilities, Triunfo will assign to RSRPD the lease agreements for all cell carriers operating at the Conifer Tank site.

The Agreement places a restrictive covenant on the A7 Water Tank site providing that Triunfo may not utilize the property for any other purpose, including installation of wireless telecommunication facilities (cell towers), without the express written consent of RSRPD.

Fiscal Impact

There are no appropriations required for this agreement since it is a property exchange between RSRPD and Triunfo.


Recommendation

It is recommended the Board approve the transfer agreement to secure the site for the construction of the Oak Canyon Reservoir and to transfer the Conifer Tank site to RSRPD following decommissioning.

MATT GRIEGER – PROJECT ENGINEER

Enc.

APPROVED FOR APRIL 25, 2011 AGENDA



Mark Lawler - District Manager

AGREEMENT FOR EXCHANGE OF REAL PROPERTY INTERESTS

THIS AGREEMENT FOR EXCHANGE OF REAL PROPERTY INTERESTS (the "Agreement") is entered into between TRIUNFO SANITATION DISTRICT ("Triunfo") and RANCHO SIMI RECREATION AND PARK DISTRICT ("Rancho Simi").

RECITALS

A. Whereas, Triunfo is the provider of water to the community of Oak Park, and owns and operates water tanks at various locations throughout the community of Oak Park.

B. Whereas, Triunfo has determined that it should replace its existing Conifer Tank ("Conifer Tank") due to the age and condition of the tank, and also due to the tank's geologically unstable location, which replacement project is identified as the Conifer Tank Replacement Project.

C. Whereas, on November 26, 2007, Triunfo approved, certified and adopted the Final Focused Environmental Impact Report, Conifer Tank Replacement Project, SCH#2005051158, November 2007 ("FEIR") through Resolution No. T07-02. A copy of Resolution No. T07 -02 is attached hereto as Exhibit 1 and incorporated herein by reference.

D. Whereas, after extensive analysis and community outreach efforts, Triunfo has selected a site for a new water tank (to replace the Conifer Tank) and utility services road. The new water tank site is identified as A7 in the FEIR ("A7 Water Tank") and is located on a portion of two (2) open space parcels that are owned by Rancho Simi and identified as Assessor's Parcel Numbers 685-0-250-425 and 685-0-101-435 (collectively, the "Site"). The Site is located north of the intersection of Churchwood Drive and Kanan Road, and adjacent to Rancho Simi's Oak Canyon Community Park.

E. Whereas, the installation of the A7 Water Tank at the Site requires Rancho Simi to grant to Triunfo: (i) land sufficient for the water tank site; (ii) a permanent easement for the construction, operation and maintenance of a utility service road and for utility lines; and (iii) a temporary construction easement for the purposes of installing the A7 Water Tank.

F. Whereas, the October 2, 1975 Agreement between Rancho Simi, then called the Simi Valley Recreation And Park District, and Metropolitan Development Corporation ("MDC"), the developer of Oak Park, expressly requires Rancho Simi to make up to six (6) sites available to MDC, or its successor-in-interest in providing water services to the community of Oak Park, for the placement of water tanks, together with such rights of ingress and egress as is necessary or convenient for these purposes. A copy of the October 2, 1975 Agreement is attached hereto as Exhibit 2 and is incorporated herein by reference.

G. Whereas, on March 19, 2009, the Rancho Simi Board of Directors adopted Resolution No. 1768 approving an Agreement For Specifying And Granting Easements And For Not Exercising Right Of Re-Entry (Effective May 8, 2009) with Alper Holdings, USA, Inc. ("Alper Agreement"), as successor in interest to the reversionary land rights held by MDC. The Alper Agreement grants to Rancho Simi the right to claim, reserve, establish and specify six (6) water reservoir sites of not more than one and one half (1-1/2) acres each, three (3) pump stations, and two (2) meter stations, with reasonable ingress and egress easements, as well as nonexclusive easements in, on, over, under and across the property for public utility purposes. A copy of Resolution No. 1768 is attached hereto as Exhibit 3 and is incorporated herein by reference.

H. Whereas, Triunfo and Rancho Simi have agreed that Triunfo shall deed the Conifer Tank site to Rancho Simi as public parkland after removal of the Conifer Tank and restoration of the Conifer Tank site as detailed in the FEIR.

I. Whereas, Triunfo, as successor in interest to Metropolitan Water Company, which is successor in interest to Metropolitan Development Corporation in providing water service to the community of Oak Park, has the authority to request and accept a deed to the Site, and Rancho Simi is obligated to deed the Site to Triunfo for the construction of the A7 Water Tank in order to provide a water storage facility to service the community of Oak Park.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Rancho Simi Obligations.

1.1 Grant Deed. Rancho Simi shall execute and deliver to Triunfo a Grant Deed, in the form and content shown in Exhibit 4, attached hereto and incorporated herein by reference, conveying to Triunfo the Site required for the installation of the A7 Water Tank, which Site is more fully described and graphically depicted in Exhibit 4. Said Grant Deed shall be executed and delivered to Triunfo by Rancho Simi within thirty (30) days of execution of this Agreement by both parties.

1.2 Permanent Easement Deed. Rancho Simi shall execute and deliver to Triunfo a Permanent Easement Deed, in the form and content shown in Exhibit 5, attached hereto and incorporated herein by reference, granting to Triunfo a permanent easement for the construction, operation and maintenance of a utility services road and utilities lines on, over, under and across Rancho Simi property, which permanent easement is more fully described and graphically depicted in Exhibit 5. Triunfo understands and agrees that the utility services road will also be used by Rancho Simi and the public as a multipurpose trail for activities including, but not limited to: walking, hiking, jogging, horseback riding, non-motorized biking, nature study, and park trail maintenance, including ingress and egress by Rancho Simi maintenance and ranger vehicles. Said Permanent Easement Deed shall be executed and delivered to Triunfo by Rancho Simi within thirty (30) days of execution of this Agreement by both parties.

1.3 Temporary Construction Easement Deed. Rancho Simi shall execute and deliver to Triunfo a Temporary Construction Easement Deed, in the form and content shown in Exhibit 6, attached hereto and incorporated herein by reference, granting to Triunfo a nonexclusive temporary construction easement for ingress and egress, construction, grading, landscaping, and installation of temporary utilities on, over, under and across Rancho Simi property, which temporary easement is more fully described and graphically depicted in Exhibit 6. Said Temporary Construction Easement shall automatically terminate upon recordation of a Notice of Completion by Triunfo accepting the construction and improvements for the Conifer Tank

7-6

Replacement Project. Said Temporary Construction Easement shall be executed and delivered to Triunfo by Rancho Simi within thirty (30) days of execution of this Agreement by both parties.

1.4 Recordation of Instruments. Rancho Simi shall accept the Irrevocable Offer of Dedication and Quit Claim Deed from Triunfo for the Conifer Tank site referenced and cause the same to be recorded in the office of the Ventura County Recorder.

Section 2. Triunfo Obligations.

2.1 Mitigation Measures Related to Construction of the A7 Water Tank.

(a) Triunfo shall fully comply with and fulfill all the mitigation measures identified the FEIR in relation to the construction of the A7 Water Tank. These mitigation measures include, but shall not be limited to, replacement of protected trees removed as a result of the project construction, installation of landscaping comprised of native species at the tank site as soon as practicably possible after completion of construction, and relocation of the existing wildlife guzzler to an area outside of the of the construction zone prior to tank construction.

(b) In addition, Triunfo shall regrade, replant and restore the temporary construction areas impacted by the construction of the A7 Water Tank to the satisfaction of Rancho Simi. Triunfo shall prepare and provide a specific planting plan for approval by Rancho Simi prior to the completion of the A7 Water Tank and shall maintain the replanted areas until the impacted areas are reestablished to the satisfaction of Rancho Simi.

2.2 Irrevocable Offer of Dedication.

(a) Triunfo shall execute and deliver to Rancho Simi an Irrevocable Offer of Dedication in the form and content shown in Exhibit 7, attached hereto and incorporated herein by reference, providing an irrevocable offer to dedicate to Rancho Simi the Conifer Tank site and access road easement, which properties are more fully described and graphically depicted in Exhibit 7. Said Irrevocable Offer of Dedication shall be executed and delivered to Rancho Simi within thirty (30) days of execution of this Agreement by both parties.

(b) Pursuant to the terms of the Irrevocable Offer of Dedication, Triunfo shall execute and deliver to Rancho Simi a Quit Claim Deed for the Conifer Tank site, in the form and content shown in Exhibit 8, attached hereto and incorporated herein by reference. Said Quit

Claim Deed shall be executed and delivered to Rancho Simi within sixty (60) days of the initiation of water service by the A7 Water Tank, or such later date as mutually agreed upon in writing by the parties.

2.3 Conifer Tank Site Wireless Telecommunications Facilities.

(a) Triunfo currently has three Communications Site Lease Agreements ("Lease Agreements") allowing current wireless telecommunications providers (AT&T Wireless, Nextel Communications, and T-Mobile as successor to Pacific Bell Wireless, collectively "Providers"), to operate wireless telecommunications facilities at the Conifer Tank site. The most current versions of these Lease Agreements are identified as: 1) Nextel Communications and Triunfo agreement dated January 26, 1998 (true copy attached as Exhibit 9); 2) Pacific Bell Wireless and Triunfo agreement dated April 26, 1999 (true copy attached as Exhibit 10); and 3) AT&T Wireless and Triunfo agreement dated July 22, 2002 (true copy attached as Exhibit 11).

(b) Within sixty (60) days of the initiation of water service by the A7 Water Tank, or such later date as mutually agreed upon in writing by the parties, it is understood and agreed that Triunfo will complete demolition of the Conifer Tank and restore the site as specified in the FEIR, and the current wireless telecommunications providers will complete construction of new wireless telecommunications facilities on the site at the Provider's or Triunfo's expense. As the current owner of the Conifer Tank site, Triunfo shall cooperate with the Providers to facilitate the redesign, permitting and development of new wireless telecommunications facilities by the Providers at the Conifer Tank site, including signing any governmental and associated permits required to allow the continued operation of the wireless telecommunications facilities.

(c) Within sixty (60) days of the initiation of water service by the A7 Water Tank, or such later date as mutually agreed upon in writing by the parties, Triunfo shall provide Rancho Simi with documentation confirming that the Providers have obtained access rights from all applicable homeowners associations permitting the Providers to access the Conifer Tank site.

(d) In the event that any Provider cannot complete construction of its new wireless telecommunication facilities at the Conifer Tank site within the sixty (60) day period set forth in Section 2.3(b), then the parties shall, by mutual agreement, extend the sixty (60) day time period set forth in Section 2.2(b) and Section 2.3(b) to allow sufficient time for the Provider

to complete construction of the new wireless telecommunications facilities and for Triunfo to complete restoration of the Conifer Tank site as specified in the FEIR.

(e) Upon completion of the demolition of the Conifer Tank and construction of the new wireless telecommunications facilities, and concurrent with Rancho Simi's acceptance of the Quit Claim Deed from Triunfo for the Conifer Tank site referenced, Triunfo shall assign to Rancho Simi the Lease Agreements with the Providers. Until that time, the Lease Agreements between Triunfo and the Providers identified in Exhibits 9, 10, and 11 will not be altered or amended without the express written consent of Rancho Simi, and Triunfo will continue to receive all lease payments. Upon acceptance of the Quit Claim Deed by Rancho Simi and assignment of the Lease Agreements to Rancho Simi, Rancho Simi will assume all rights and obligations of the Lease Agreements, including receiving all lease payments.

2.4 Mitigation Measures Related To The Conifer Water Tank. Triunfo shall fully comply with and fulfill all the mitigation measures identified in the FEIR in relation to the abandonment of the Conifer Water Tank. These mitigation measures include, but shall not be limited to, removal of the existing Conifer Tank and permanently plugging the existing pipeline to the site.

2.5 Restrictive Covenant For A7 Water Tank Site. Triunfo agrees that the grant of Rancho Simi property, grant of permanent easement, and grant of temporary construction easement to Triunfo has been made solely for the purposes of installing a new water tank, providing a utility services access road and necessary utility lines which will enable Triunfo to provide adequate water service to the community of Oak Park. Triunfo may not utilize the property for any other purpose, including installation of wireless telecommunication facilities (cell towers) on the property, without the express written consent of Rancho Simi.

2.6 Recordation of Instruments. Triunfo shall accept the Grant Deed, Permanent Easement Deed and Temporary Construction Easement Deed from Rancho Simi herein referenced and cause the same to be recorded in the office of the Ventura County Recorder.

2.7 Indemnification/Insurance.

(a) Triunfo shall indemnify and hold harmless Rancho Simi from any and all claims, damages, costs, judgments, or liability caused by Triunfo or its officers, employees or agents during construction of and/or the ongoing use by Triunfo of the A7 Water Tank, utility services road and utility lines.

(b) Prior to any work being performed on Rancho Simi property, Triunfo's contractor(s) shall furnish Rancho Simi with a Certificate of General Liability Insurance in the amount of Two Million Dollars (\$2,000,000). Said Certificate shall be furnished in a form acceptable to Rancho Simi and shall include a Certificate of Endorsement naming Rancho Simi as additional insured (sample attached as Exhibit 12). In addition, Triunfo's contractor(s) shall be required to execute a Rancho Simi Hold Harmless and Insurance Agreement per the sample enclosed (Exhibit 13).

Section 3. General Provisions

3.1 District Board Approval. This Agreement is subject to and conditioned upon approval and ratification by the Boards of both Triunfo Sanitation District and Rancho Simi Recreation and Park District. This Agreement is not binding upon either entity until executed by the appropriate official(s) acting in their authorized capacity of each party hereto.

3.2 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings (whether written or oral) of the parties. This Agreement cannot be modified in any manner except by an instrument in writing executed by the duly authorized representatives of the parties or of their respective successors in interest.

3.3 Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

3.4 Waivers. Any waiver of a breach of any covenant or condition in this Agreement is not to be deemed a waiver of any other covenant or condition in this Agreement and no waiver is valid unless in writing and executed by the duly authorized representative of the waiving party.

An extension of time for performance of any obligation or act is not to be deemed an extension of the time for performance of any other obligation or act.

3.5 Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form includes plural, and vice versa. The term "shall" means mandatory and the term "may" means permissible. This Agreement is not to be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

3.6 Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart is an original, but all counterparts are the same instrument.

3.7 Successors. This Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

3.8 Governing Law. This Agreement is to be governed and construed in accordance with California law.

3.9 Effective Date. This Agreement shall be deemed effective upon execution by the last party to sign this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the effective date.

TRIUNFO SANITATION DISTRICT

Date: _____

By: _____
Michael Paule, Chair
Board of Directors

Approved As To Form:

Arnold, Bleuel, LaRochelle, Mathews
& Zirbel, LLP

Date: _____

By: _____
John Mathews
Legal Counsel for District

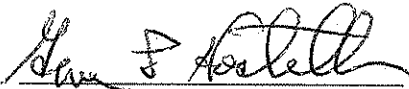
ATTEST:

Date: _____

By: _____
Josie Guzman
Clerk of the Board

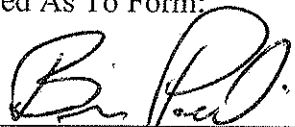
RANCHO SIMI RECREATION AND PARK
DISTRICT

Date: 3-17-11

By: 
Gene Hostetler, Chair
Board of Directors

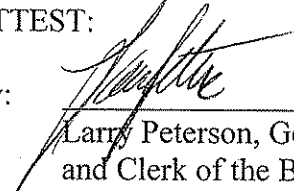
Approved As To Form:

Date: 3-11-11

By: 
Brian Pierik
Legal Counsel for District

ATTEST:

Date: 3/21/11

By: 
Larry Peterson, General Manager
and Clerk of the Board

7-12