

FORT ORD REUSE AUTHORITY BOARD REPORT

CONSENT AGENDA

Subject:	Approve Highway 68 Operational Improvements Reimbursement Agreement	
Meeting Date:	May 16, 2014	ACTION
Agenda Number:	8b	

passed

RECOMMENDATION:

Approve the attached reimbursement agreement (**Attachment A**) between the Fort Ord Reuse Authority (FORA), County of Monterey (County) and Transportation Agency for Monterey County (TAMC) for Highway 68 Operational Improvements.

BACKGROUND:

FORA Capital Improvement Program (CIP) Project R12 (Highway 68 Operational Improvements) was assigned by TAMC during their 2005 FORA Fee Reallocation Study. The project involved operational improvements at San Benancio, Laureles Grade and Corral De Tierra, including left turn lanes and/or improved signal timing. As a Regional Improvement, FORA's assigned funding to Project R12 was a portion (\$223,660) of the total projected cost. That amount was annually inflated and is currently \$312,205 in the FY 2013/14 CIP.

DISCUSSION:

During CIP reprogramming in FY 2012/13, County and TAMC staff requested that Project R12 receive priority funding. The FORA Board adopted the FY 2012/13 CIP, which included funding Project R12 in FY 2012/13. Although County was identified as the project lead agency, they requested TAMC utilize Regional Development Impact Fees to complete the improvements. The project concluded in 2012, but reimbursement funds were unavailable in that fiscal year.

Again during CIP reprogramming in FY 2013/14, County and TAMC staff requested that Project R12 remain eligible for funding in the immediate fiscal year. The FORA Board adopted the FY 2013/14 CIP which included fully funding Project R12 (\$312,205) in FY 2013/14. TAMC staff requested, and FORA staff and Administrative Committee recommend, that the FORA Board approve the attached reimbursement agreement for Highway 68 Operational Improvements. Payment satisfies this mitigation requirement.

FISCAL IMPACT:

Reviewed by FORA Controller 

FORA collected about \$1.5 million in FY 2013/14 developer fees. Therefore, reimbursement funds are available per the approved CIP budget.

COORDINATION:

TAMC, County of Monterey, Administrative Committee

Prepared by


Crissy Maras

Approved by


Michael A. Houemard, Jr.

**REIMBURSEMENT AGREEMENT BETWEEN THE FORT ORD REUSE
AUTHORITY, THE COUNTY OF MONTEREY AND THE TRANSPORTATION
AGENCY FOR MONTEREY COUNTY FOR CONSTRUCTION OF CERTAIN
OPERATIONAL IMPROVEMENTS ON HIGHWAY 68 AT SAN BENANCIO,
LAURELES GRADE AND CORRAL DE TIERRA**

THIS AGREEMENT is made on this 21st day of May, 2014, by and between the FORT ORD REUSE AUTHORITY, hereinafter called "FORA," and the TRANSPORTATION AGENCY FOR MONTEREY COUNTY, hereinafter called "TAMC".

RECITALS

- A. In June 1997, the FORA Board of Directors adopted a Final Environmental Impact Report and a Fort Ord Base Reuse Plan ("Plan"). The Plan defines a series of project obligations of the Plan as the Public Facilities Improvement Plan ("PFIP"). The PFIP serves as the baseline Capital Improvement Program ("CIP") for the Plan. The FORA Board of Directors annually revisits, reviews and considers a modified CIP that includes reprogramming of projects or other modifications deemed appropriate and necessary, such as the inclusion of the most recent TAMC study that reallocated transportation mitigation funds. That Study, entitled "FORA Fee Reallocation Study", was endorsed by the FORA Board of Directors on April 8, 2005.
- B. The 2005 "FORA Fee Reallocation Study" defined \$223,660 in FORA fees to pay for the preliminary engineering, design, environmental, construction and construction management of the "Hwy 68 Operational Improvements" project (FORA CIP Regional Improvement Project #R12). Project #R12 includes left turn lanes and improved signal timing at San Benancio, Laureles Grade and Corral De Tierra. The funds are currently programmed in FY 2013/2014.
- C. The initial \$223,660 delineated in CIP funding has been annually indexed under CIP policies and is now \$312,205 as the FORA obligation total for Project #R12.
- D. On September 13, 2013 the FORA Board of Directors revised, reviewed and approved the FY 2013/2014 through Post-FORA CIP. Development fees for construction of Project #R12 are included in the FY 2013/2014 through Post-FORA CIP and are programmed in FY 2013/2014.
- E. On August 6, 2009, due to the need for additional funding to complete Project #R12 due to unanticipated supplementary environmental analysis, the County of Monterey, Lead Agency for the Project, submitted a letter to TAMC requesting the allocation of ad-hoc development fees to allow the County of Monterey to fully fund the construction phase of the Highway 68 transportation projects in a timeframe much sooner than programmed under the FORA Capital Improvement Program.
- F. On August 26, 2009, the TAMC Board of Directors approved allocation of Regional Development Impact Fee funds from TAMC to the County of Monterey, and funding was provided up to the FORA Project share of \$312,205, on the

condition that the Transportation Agency would be reimbursed from the County of Monterey's share of the FORA fees for the Project.

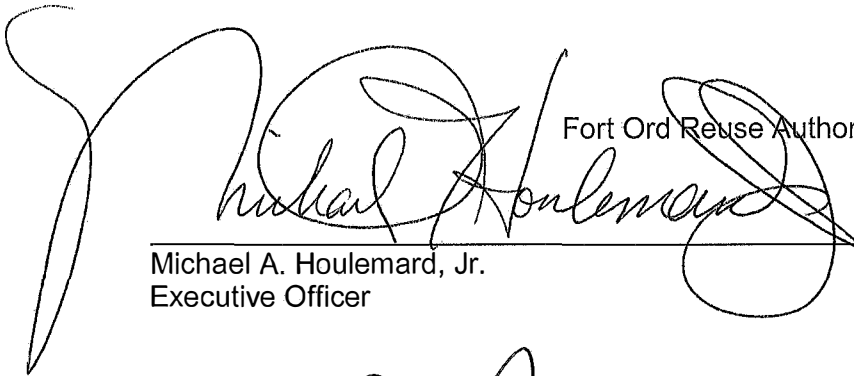
- G. The County of Monterey completed construction of the Project on October 11, 2012.
- H. The purpose of this Agreement is to establish the extent and manner in which TAMC will be reimbursed by FORA for the FORA CIP portion of the Project costs.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Reimbursement to TAMC. FORA's obligation to reimburse TAMC is contingent upon the development market and FORA's corresponding collection of Community Facilities District ("CFD") fees. Fees collected under the FORA Community Facilities District are the only source of funds obligated for reimbursement under this Agreement. As of April 2, 2014, FORA has collected \$1.2 million in CFD fees. FORA shall reimburse TAMC for the costs incurred from August 26, 2009 through Project completion to the limit of FORA's obligation to the Project under the, then current, CIP.
2. Amount of Reimbursement. FORA, under this Agreement with TAMC, shall reimburse TAMC for the FORA share of the total Project cost as presented in the, then current, FORA CIP. FORA shall allocate \$312,205 in CFD fees in fulfillment of its obligations for Project #R12 to mitigate impacts under its CIP. Any funds designated to reimbursements shall not exceed FORA's allocation to the CIP transportation mitigations.
3. Invoices to FORA. TAMC shall submit an invoice to FORA. The invoice shall include a copy of a Notice of Completion filed with the County Recorder's office for the project.
4. Timing of Reimbursement. FORA shall reimburse TAMC with CFD fees, programmed to fund the Project, with the payment due no later than June 30, 2014, which is the last day of FY 2013/14 4th quarter.
5. Audit. TAMC agrees that TAMC's books and expenditures related to the Project shall be subject to audit by FORA.
6. Amendment by Written Recorded Instrument. This Agreement may be amended or modified, in whole or in part, only by a written and recorded instrument executed by both parties.
7. Indemnity and Hold Harmless. TAMC agrees to indemnify, defend and hold harmless from and against any loss, cost claim or damage directly related to TAMC's actions or inactions under this Agreement. FORA agrees to indemnify, defend and hold harmless from and against any loss, cost claim or damage directly related to FORA's actions or inactions under this Agreement.

8. Governing Law. This Agreement shall be governed by and interpreted by and in accordance with the laws of the State of California.
9. Entire Agreement. This Agreement, along with any exhibits and attachments hereto, constitutes the entire Agreement between the parties hereto concerning the subject matter hereof.
10. Interpretation. It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

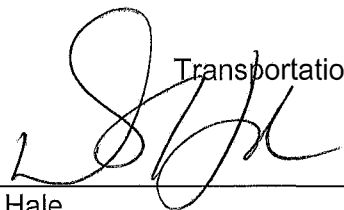
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set out opposite their respective signatures,


Fort Ord Reuse Authority
Date: May 21, 2014

Michael A. Houlemard, Jr.
Executive Officer


Approved as to form:


Jon R. Giffen
FORA Authority Counsel


Transportation Agency for Monterey County
Date: 6/19/14

Debra L. Hale
Executive Director

Approved as to form:


Kathryn Reimann, TAMC Counsel