

RESOLUTION NO. 4225

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING A JOINT POWERS AGREEMENT TO ADMINISTER REGIONAL
DEVELOPMENT IMPACT FEES IN THE CITY OF SOLEDAD**

WHEREAS, the City of Soledad is a member of the Association of Monterey Bay Area Governments (AMBAG) and participates in the Transportation Agency for Monterey County (TAMC) by appointment of members of the TAMC governing Board; and

WHEREAS, TAMC prepared a Regional Transportation Plan which identifies regional transportation needs resulting from growth and development anticipated to occur throughout Monterey County. The Plan recognizes how transportation impacts of projects in one jurisdiction affect the transportation network in other jurisdictions throughout the County; and

WHEREAS, TAMC retained consultants to prepare a Nexus Study for a Regional Developer Impact Fee, which identified specific regional transportation projects necessary to mitigate the impacts of new development in the region which impact the regional transportation network, the costs of these projects, and a share of costs attributable to new development, in support of the adoption by each of the member jurisdictions of TAMC of a Regional Development Impact Fee (RDIF); and

WHEREAS, TAMC has prepared the Joint Powers Agreement which will create a new joint powers agency to assist its member jurisdictions in administering and accounting for the RDIF; and

WHEREAS, it is in the best interests of the City of Soledad and the people of the City of Soledad to provide the most efficient and coordinated administration of the RDIF program which will in part lessen the administrative costs to operate the program and maximize the collection and use of funds to improve the regional transportation network to accommodate the increased demands on the network caused by growth and development.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Soledad, that the Mayor of the City of Soledad is hereby authorized to enter into and execute on behalf of the City of Soledad the Joint Powers Agreement for the Regional Development Impact Fee in the form attached hereto as Exhibit "A".

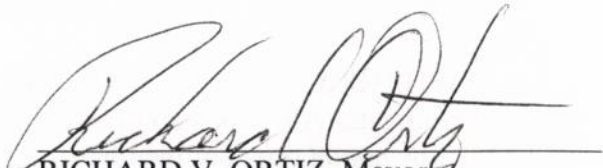
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 4th day of June, 2008, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

NOES, Councilmembers: None

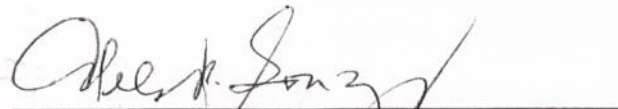
ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None



RICHARD V. ORTIZ, Mayor

ATTEST:



ADELA P. GONZALEZ, Assistant City Clerk

Exhibit "A"

Joint Powers Agreement - Regional Development Impact Fee

**WHAT IS YOUR
CREDIT SCORE?**

620

830

740



Find Out Instantly!

JOINT POWERS AGREEMENT

Monterey County Regional Development Impact Fee Agency

This JOINT POWERS AGREEMENT (the "Agreement") is entered into pursuant to Government Code section 6502 by and among the County of Monterey ("County") and the incorporated Cities located in Monterey County who have executed this Agreement ("Cities"), subject to the certification required by Section 9 of this Agreement. The Cities and the County may be referred to collectively as the "Parties."

RECITALS

This agreement is based on the following facts and circumstances:

- A. **Impact of Development.** Forecasting performed using the Association of Monterey Bay Area Governments regional travel demand model shows that by the year 2030, Monterey County will contain an additional 50,639 new housing units and 106,475 new jobs. The traffic impact of these new residential units and commercial uses, as well as additional development beyond the year 2030, will adversely affect the quality of life for existing residents of the Cities and Counties within Monterey County unless those regional impacts are mitigated by offsite street and highway improvements.
- B. **Regional Development Impact Fee.** State law allows the Cities and the County to establish a fee on all new development within their respective jurisdictions, which for the County is limited to the unincorporated area of the County, which would finance all or a portion of these Transportation Improvement Projects.
- C. **Collection and Use of Improvement Fees.** In accordance with the agreements set forth herein, the Parties each intend to collect the fees, listed in Exhibit "A" to this Agreement, as such fees may be adjusted from time to time in the manner described in this Agreement, for the regional Transportation Improvement Projects on a uniform basis and to use the fees collected in a coordinated manner to provide for financing and construction of the regional Transportation Improvement Projects.
- D. **Regional Projects.** The Transportation Agency of Monterey County ("TAMC"), in coordination with the Cities and the County, has identified, through the Regional Development Impact Fee -- Nexus Study Update approved by the board of TAMC on January 16, 2008 (the "Study"), regional Transportation Improvement Projects, listed in Exhibit "B" to this Agreement, which are designed to help mitigate the regional impacts of forecasted development within the county.

- E. **Mitigation of Regional Transportation Impacts of Local Development.** Adoption and implementation of a Regional Development Impact Fee will permit consistent evaluation and mitigation of the regional transportation impacts of local development project applications under consideration by any of the Parties, in a manner to simplify and lessen the cost of compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000, et. seq.
- F. **Priority for Eligibility for Matching Funds or Other Funding.** The Parties intend that priority for funding utilizing matching funds or other sources of revenue available for Regional Transportation Projects shall be given to the Projects of participating jurisdictions that have adopted a Regional Development Impact Fee in accordance with this Agreement.

NOW, THEREFORE, the Parties agree:

Section 1.
Parties

The Parties to this Agreement are those parties signatory hereto or signatory in the future, which include the County of Monterey and not less than eight (8) of the incorporated cities in Monterey County.

Section 2.
Formation of the Monterey County Regional Development Impact Fee Joint Powers Agency

Pursuant to the authority of Government Code, section 6500, et seq., the Parties hereby establish the Monterey County Regional Development Impact Fee Joint Powers Agency ("RDIF Agency").

- a. **Purpose.** The purpose of the RDIF Agency shall be to jointly exercise the powers of the City and County Parties pursuant to the California Mitigation Fee Act, Government Code, section 66000, et seq. to collect, administer, program and spend the proceeds of a Regional Development Impact Fee to mitigate regional transportation impacts of new development adopted by each of the City and County Parties in accordance with the terms of this Agreement.
- b. **Separate Agency.** The RDIF Agency is a legal public entity separate and distinct from any of the Parties.
- c. **Powers.** The RDIF Agency shall have the following powers:

1. Except as expressly limited by this Agreement, to exercise the powers of joint powers agencies specified in Government Code, section 6508, and shall enjoy the privileges and immunities set forth in Government Code, section 6513.
 2. To exercise all of the powers and duties of the City and County Parties pursuant to the California Mitigation Fee Act, Government Code, section 66000, *et seq.*, save and except the adoption or the subsequent increase of the amount of the fee pursuant to Government Code, section 66016, which is reserved to the City and County Parties* (other than the automatic annual indexed increase provided for in Section 13 of this Agreement), and collection of the fee, which is the responsibility of the City and County Parties pursuant to Section 6 of this agreement.
 3. To indemnify any or all the Parties in the manner described in section 18 of this agreement.
 4. To contract with TAMC for the provision of all administrative and technical services necessary to administer the Regional Development Impact Fee Program, and with professional engineers, accountants, attorneys and transportation experts or other advisors as its Board of Directors deems necessary and appropriate.
 5. Unless otherwise provided in a separate written agreement, the RDIF Agency shall be exclusively liable for any of its debts, liabilities or obligations, which shall not be the joint or several debts, liabilities or obligations of any of the Parties.
- d. Governance. The RDIF Agency shall be governed by a Board of Directors. The members of the Board of Directors shall be constituted by the City and County representatives to the TAMC Board of Directors, provided that the City or County being represented is a signatory of this Agreement. The Executive Director of TAMC shall serve as the Clerk of the RDIF Agency for purposes of maintaining the record of proceedings and other books and records of the RDIF Agency. In this capacity, the Executive Director of TAMC shall be the agent for service of process for the RDIF Agency.
- e. Bylaws. The RDIF Agency hereby adopts by reference the bylaws, policies, rules and procedures adopted by and applicable to TAMC, including use of the weighted voting formula set forth in Section 7.2 of those bylaws with respect to the vote of the Board of Directors, except as those bylaws, policies, rules or procedures may refer or apply to individuals or entities that are not signatories to this Agreement.

f. Termination; Withdrawal. This Agreement, and the existence of the RDIF Agency, shall be terminated either (i) by a two-thirds vote of the Board of Directors at a duly noticed meeting of the Board of Directors, and by adoption of a resolution of termination by two-thirds of the governing bodies of the Parties to this Agreement, or (ii) in the event that the County of Monterey and at least four (4) of the incorporated cities no longer continue to be Parties to this Agreement. A Party may withdraw from this Agreement by giving ninety (90) days written notice to the Board of Directors following the adoption of a resolution of the governing body of the Party withdrawing from the RDIF Agency; provided that any Party voluntarily withdrawing shall be required to continue to collect and remit Regional Development Impact Fees for a period of four (4) years following the date of withdrawal. Any Party voluntarily withdrawing shall have no right to receive any distribution of the assets of the RDIF Agency as provided in Section 2(g) hereof. Any Party that fails to comply with its obligations under this Agreement shall be deemed to have withdrawn from the RDIF Agency which shall be in addition to any remedies at law or in equity that may be available to enforce this Agreement against a defaulting Party.

The RDIF Agency shall only expend Regional Development Impact Fees for transportation projects located in whole or in part within the jurisdiction of one of the member public agencies; provided that with respect to a member that has withdrawn as provided in this Section 2f and is still required to collect Regional Development Impact Fees, such fees shall still be expended for transportation projects located in whole or in part within the jurisdiction of such withdrawing member during the period that the member is required to collect Regional Development Impact Fees. If a local public agency withdraws from the RDIF Agency, the parties hereto acknowledge TAMC's role separate and apart from its responsibilities as the administrator of the RDIF Agency to assess on a case-by-case basis, the regional transportation impacts of any development project within the jurisdiction of the withdrawing public agency for which a proposed Negative Declaration or draft EIR has been prepared, and if appropriate, to recommend mitigation measures to reduce such impacts to a level less than significant, which may or may not requirement the payment of impact fees in an amount greater than the RDIF.

g. Disposition of Assets and Proceeds upon Termination. Upon termination of this Agreement, the property of the RDIF Agency shall be disposed, divided and distributed to the member Parties at the time of termination, if real property or improvements, or to the parties paying the fee for funds not expended for transportation improvement projects, or his/her successors in interest in accordance with the terms specified in the Mitigation Fee Act.

Section 3.
Definitions

- a. "Project Sponsor" refers to the Party designated to oversee the use of Regional Development Impact Fee revenues in the development of a specific regional Transportation Improvement Project. The Party designated as Project Sponsor may be, but need not be, the lead agency for environmental clearance or the agency responsible for the design or construction of the project itself.
- b. "Regional Development Impact Fee," or "the Fee," or "RDIF" refers to the fees to be imposed by the Cities and Counties on development within the county. The project list for the Regional Development Impact Fee is in Section 7 of this Agreement.
- c. "Transportation Improvement Projects," or "Projects" refers to those public improvements required to mitigate the regional traffic impacts of development within the County as specified in Section 7 of this Agreement.
- d. "Treasurer" refers to the finance officer or administrative services manager of TAMC who is hereby appointed as an officer of the RDIF Agency to act as Treasurer pursuant to this Agreement.
- e. "Transportation Improvement Zones" means the 4 subareas identified on the map in Exhibit "A" hereto.

Section 4.
Purposes

This agreement is made pursuant to Law for the following purposes:

- a. To establish a framework for the enactment by the Parties of a Regional Development Impact Fee, a uniform regional fee on development within Monterey County not legally precluded from the fee, to fund all or part of the necessary transportation improvements identified in the Study.
- b. To help resolve regional traffic problems through implementation of the Study and the Regional Development Impact Fee program.
- c. To establish funding goals for identified Transportation Improvement Projects and to seek commitments regarding funding for the Transportation Improvement Projects.
- d. To establish mechanisms for collecting, managing, and disbursing the Fee and to formalize institutional arrangements for the implementation of the Projects to be constructed with Fee revenues.

Section 5.

Powers and Duties of the Treasurer

The Treasurer shall perform the following powers and duties:

- a. Keep a record of all Regional Development Impact Fees paid to the RDIF Agency by any Party, all disbursements and expenditures made by the Treasurer in accordance with this agreement, and have the right at the discretion of the Treasurer to audit the levy, collection and transmittal of Regional Development Impact Fees by any party;
- b. Transmit monies from the Joint Regional Development Impact Fee Account to Project Sponsors for the planning, design, and construction of the Transportation Improvement Projects listed in Exhibit "B" of this Agreement and in accordance with the Strategic Expenditure Plan adopted as provided in Section 11 hereof;
- c. Reimburse project developers from the Joint Regional Development Impact Fee Account pursuant to Section 15 of this Agreement;
- d. Prepare reports required by Government Code, section 66000 *et. seq.* ("AB 1600" the Mitigation Fee Act) annually to comply with Government Code section 66006 (b)(1);
- e. Account for all monies from the Joint Regional Development Impact Fee Account received in accordance with Government Code section 6505 and exercise the powers and duties with respect to the Regional Development Impact Fee program as provided in Government Code section 6505.5;
- f. Keep a record of the Treasurer's time and expenses in performing the Treasurer's duties hereunder; and
- g. Other duties as specified by law or as required by the Parties.

Section 6.

Collection of Regional Development Impact Fees

Each Party hereby agrees to collect as a condition to approval of development within their respective jurisdictions, to the extent that it is legally authorized to do so and subject to the exemptions from collection as provided in Exhibit "A" of this Agreement, the Regional Development Impact Fee from all development projects, as that term is defined in subdivision (a) of Government Code section 66000. The amount of that fee shall be as described in Exhibit "A" of this Agreement, as may be adjusted from time to time pursuant to the terms of this Agreement. To accomplish the collection of the Regional Development Impact Fee, each Party further agrees:

- a. To adopt the necessary ordinance(s) and/or resolution(s) to require payment of and establish the amount of the Regional Development Impact Fee by all non-exempt development projects subject to its jurisdiction.
- b. To require, unless prohibited by law, that each non-exempt development project (or portion thereof) pay the Regional Development Impact Fee to the local agency as provided in Section 12 of this Agreement.
- c. To refrain from entering into development agreements that protect non-exempt development projects from future increases to the Fee.
- d. And no later than the 10th business day of each month, to remit to the RDIF Agency one hundred percent (100%) of the RDIF fees collected, plus any interest earned thereon during the prior month which interest shall be paid no later than the 1st day of each calendar quarter.

Section 7.

Regional Development Impact Fee Accounts

The RDIF Agency shall deposit the amount of each Regional Development Impact Fee received into one or more interest-bearing accounts to be used for the Transportation Improvement Projects; provided that in the event that a County-wide sales tax program for the purpose of funding transportation improvements projects fails to pass, the Strategic Expenditure Plan described in Section 10 hereof shall establish a priority for the expenditure of Regional Development Impact Fees collected from a particular Transportation Improvements Zone for Transportation Improvement Projects within the particular Transportation Improvement Zone from which the Regional Development Impact Fee was collected.

The deposits in each account shall be invested in the same manner as the other funds of public agencies in Monterey County. For investment purposes the funds may be pooled with other funds as long as separate accounting is maintained and the account is credited with the investment earnings.

- a. The Treasurer shall maintain a current record of all funds received from the Parties and deposited to the Regional Development Impact Fee accounts described above, including interest of income on such funds and annually furnish the Parties with an accounting for inclusion in an audit of Regional Development Impact Fees.
- b. Interfund transfers or loans may be made solely for the purposes of funding other Regional Transportation Improvement Projects.

Section 8.

Transportation Improvement Projects

The Regional Development Impact Fee shall be used to fund all or a portion of the costs of the projects listed and described in Exhibit "B" of this Agreement.

Section 9

Effective Date of Agreement and Fee Ordinance and/or Resolution

The parties desire that this Agreement shall be effective in each jurisdiction on the same date, conditioned on the approval of the Agreement by the County and at least eight (8) of the Cities, which date shall be certified by the Executive Director of TAMC ("Effective Date of Agreement"). On the same date as the approval of the Agreement by the County and the Cities, the governing board or council of each of the public agency members shall adopt its resolution and/or ordinance imposing the Regional Development Impact Fee.. The resolution and/or ordinance imposing the fee shall provide that the fee will be effective on the sixty-first day after the adoption of the ordinance and/or fee, but in no event prior to the Effective Date of the Agreement (the "Effective Fee Date"). Unless such certification of adoption is made on or before December 31, 2008, this Agreement shall have no force or effect.

Section 10.

Strategic Expenditure Plan

The RDIF Agency shall prepare, adopt by a vote of the RDIF Agency Board, and forward to each Party the Strategic Expenditure Plan ("SEP") within twelve months of the Effective Fee Date. The SEP shall include project cost estimates, revenue estimates for the Regional Development Impact Fee, other matching funds, a draft timeline for project delivery and, in the event the County-wide sales tax measure for transportation improvements fails to pass, a plan for prioritizing the expenditure of Regional Development Impact Fees collected from development within a particular Transportation Improvement Zone on Transportation Improvements within that zone.

- a. The RDIF Agency shall consider the following criteria when establishing the delivery schedule of the Transportation Improvement Projects in the SEP:
 - i. **Project Readiness** including degree of completion of environmental and design phases; well-documented preliminary cost estimates, and documented community support as appropriate;
 - ii. **Project Funding:** Availability of matching funds from other sources, including federal, state and local monies;
 - iii. **Relative Level of Need or Urgency** for the project, in consideration of safety and congestion relief impacts;.
 - iv. **Cost Effectiveness**, including the ability to construct the project in the short term for a large long-term gain in safety or congestion relief; and,

- v. **Fair Geographic Distribution** of projects reflecting where growth is occurring throughout the County.

Section 12.
Time of Payment

The Regional Development Impact Fees shall be collected either at the time of the issuance of a building permit or, at such later date as may be required by law (in particular Government Code section 66007).

Section 13.
Regional Development Impact Fee Adjustments

- a. The Regional Development Impact Fee shall be automatically adjusted as of July 1 of each year following the first year of the Effective Fee Date. The adjustment shall be set by the Treasurer, based on the increase or decrease in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the 12-month period ending December 31 of the preceding calendar year.
- b. In addition to the automatic adjustment provided in the Regional Development Impact Fee, the RDIF Agency Board of Directors, TAMC, or any of the Parties may from time to time recommend to the Parties that the Regional Development Impact Fee be increased to reflect revisions to the project list in the Monterey County Regional Transportation Plan, increases or decreases in projected program revenue or project costs, increases in land values over the inflationary increase, or other factors. The amount of such adjustments shall be approved by a unanimous vote of all of the RDIF Agency Board of Directors and adopted in a resolution by the governing board or council of each Party. Concerted efforts shall be made to attract and obtain other funds from other available revenue sources for which the projects are eligible.

Section 14.
Administrative Costs

Up to 1% of the Regional Development Impact Fees received by the Treasurer may be used to cover the administrative costs owed by the RDIF Agency to TAMC as Administrator as described in Section 16 hereof. Notwithstanding anything in this Agreement to the contrary, no Party to this Agreement shall be required to contribute any amounts to cover the administrative costs of the RDIF Agency from their general funds or other amounts unrelated to the Regional Development Impact Fee Program.

Section 15.
Credit or Reimbursement for Developer-Constructed Projects

The Parties shall provide in their implementing ordinance or resolution that a developer who constructs all or part of one of the Transportation Improvement Projects may be eligible for a credit or reimbursement, as provided herein.

- a. **Credit or Reimbursement for Project Funded in SEP.** A developer may be eligible for a credit to be applied against payment of the Regional Development Impact Fee if the developer constructs or dedicates right-of-way with respect to all or a part of one of the Transportation Improvement Projects that is, at the time the developer enters into an agreement for construction of such project, included in the prioritization plan of the SEP as a project to be funded.

A developer may be eligible for a reimbursement if the cost of constructing such a Transportation Improvement Project, or a part of such project, exceeds the amount of the Regional Development Impact Fee to be paid by the developer. The amount of reimbursement shall equal the difference between the cost of constructing all or a part of the Transportation Improvement Project and the Regional Development Impact Fee for the development project.

Reimbursement shall be from Regional Development Impact Fee revenues only, and the right to reimbursement shall be terminated ten years from the date the developer entered into the agreement for construction of the project.

The amount of credit, or the credit and reimbursement together, shall be in an amount equal to the cost of the Transportation Improvement Project or portion thereof, as set forth in the SEP, and shall be calculated by the RDIF Agency. The credit, or the credit and reimbursement together, shall be calculated at the time the developer enters into an agreement for construction of the Transportation Improvement Project and posts bonds. The credit shall be granted at the same time. Once calculated, the amount of reimbursement shall not increase for inflation nor shall it accrue interest.

- b. **Reimbursement for Projects Not Funded in SEP.** If a developer constructs all or a part of a Transportation Improvement Project that is not, at the time the developer enters into an agreement for construction of such project, included in the prioritization plan of the SEP as a project to be funded, the developer may be eligible for reimbursement from the Treasurer, provided that the SEP is subsequently revised to include the improvement in the prioritization plan as a project to be funded. In such event, the amount of reimbursement shall be in an amount equal to the cost of the Transportation Improvement Project or portion thereof, as set forth in the SEP, and shall be calculated by the RDIF Agency. The amount of the reimbursement shall be calculated when the developer enters into an agreement for construction of the Transportation Improvement Project and posts bonds. Once calculated, the amount of reimbursement shall not increase for inflation nor shall it accrue interest. Reimbursement shall be from Regional Development Impact Fee revenues only, and the right to reimbursement shall be

terminated ten years from the date the developer entered into the agreement for construction of the project.

Section 16.

Duties to be Performed by the RDIF Agency; TAMC As Administrator

Other than the initial adoption of and determination of the amount of the Regional Transportation Impact Fee and any increase of the fee, other than automatic adjustments as provided in Section 13 (a) of this Agreement, and any determination required to be made pursuant to Government Code section 66001 (b), the RDIF Agency shall exercise all powers and conduct all other duties and obligations permitted or required to be performed by local agencies under the Mitigation Fee Act for the operation and administration of the Regional Development Impact Fee on behalf of each or all of the Parties whether acting individually or collectively pursuant to the authority granted by each of the Parties to the RDIF Agency pursuant to the Joint Exercise of Powers Act, Government Code, section 6506. The RDIF Agency shall contract with TAMC to perform any or all of these duties. Such duties shall include, but not be limited to:

- a. The review of studies and reports prepared by TAMC to the Parties concerning the growth and development planned and completed within Monterey County and its impact on the regional transportation network. In conjunction with the preparation of Regional Transportation Plans and Congestion Management Plans by TAMC, TAMC shall regularly review proposals and adopted General Plan amendments by all jurisdictions within Monterey County and comment upon projected potentially significant impacts of development which may result from such General Plan amendments, and shall report to the RDIF Agency Board and the Parties any recommendations for adjustments to the Regional Development Impact Fee program or other measures which may be required to mitigate such impacts.
- b. The adoption by the RDIF Agency Board in the fifth fiscal year following the first deposit into the Joint Regional Development Impact Fee Account, and every five years thereafter, of the findings required by Government Code section 66001 (d).
- c. When sufficient funds have been collected to complete financing on incomplete public improvements and the public improvements remain incomplete, the identification, within 180 days of the determination that sufficient funds have been collected, of an approximate date by which the construction of the public improvements will be commenced or to recommend the refund of the unexpended portion of the fee, and any interest thereon, as required by Government Code section 66001 (e) and (f).
- d. The preparation of a form of written notice to be provided by the Parties at the time of approval of a project and a statement of the amount of the fees, and that the 90-day period within which the applicant may protest has begun. The

notice shall provide that any protest of the Regional Development Impact Fee pursuant to Government Code section 66020 (a) shall be served upon the RDIF Agency Board.

- e. The production of evidence of the reasonableness and documents which establish that the Regional Development Impact Fee does not exceed the cost of the transportation facilities for which it is imposed in response to requests pursuant to Government Code section 66024 (b)(2).
- f. The retention of an independent auditor to conduct an audit of the Regional Development Impact Fee program, if requested pursuant to Government Code section 66023.
- g. The defense of any action to attack, review, set aside, void or annul the imposition of the Regional Development Impact Fee filed pursuant to Government Code section 66020 (d)(2).
- h. Making recommendations to the RDIF Agency concerning any refund of all or any portion of the Regional Development Impact Fee pursuant to Government Code sections 66001 (e) or (f) or 66020 (e) or (f).

Section 17. **Amendments**

This Agreement may be amended at any time by an amendment approved by a unanimous vote of the members of all of the RDIF Agency Board of Directors. Notwithstanding this requirement, the list of projects attached hereto as Exhibit "B" may be altered from time to time upon the approval of a majority of the RDIF Agency Board of Directors in attendance at the meeting during which voting takes place to reflect completion of projects, changes in project costs, changes in adopted land use plans of the County or Cities, provided that the changes do not alter the fee amounts set forth in Exhibit "A" of this Agreement as adjusted in accordance with Section 13a. of this Agreement without compliance with this section..

Section 18. **Indemnification**

- a. The RDIF Agency shall defend, protect, hold harmless and indemnify any or all the Parties from any action taken to challenge, nullify or otherwise hold any Party liable for monetary damages or any other remedy based upon the adoption, collection or enforcement of the Regional Development Impact Fee for the funding of transportation projects, or the exercise of any of the rights and duties of the Parties under the Mitigation Fee Act, the California Environmental Quality Act or any other state or federal statute, regulation, law or constitutional provision asserted with respect to the Regional Development Impact Fee, whether such action is filed at the time of the

imposition of the Regional Development Impact Fee or such later date if the Regional Development Impact Fee is paid under protest; provided that none of the Parties shall be obligated to provide funds to pay for such indemnification from their general funds or other assets unrelated to the Regional Development Impact Fee Program. The RDIF Agency shall obtain an indemnification from TAMC in the Agreement for Services between the RDIF Agency and TAMC regarding the administration of the RDIF or some other agreement obligating TAMC to provide legally available funds of TAMC to fund the RDIF Agency's obligations to indemnify the Parties under this Section 18.

- b. Unless otherwise provided in a separate written agreement, the RDIF Agency shall be exclusively liable for any of its debts, liabilities or obligations, which shall not be the joint or several debts, liabilities or obligations of any of the Parties.
- c. It is expressly agreed by all parties to this Agreement that, in contemplation of sections 895.6 and 6508.1 of the Government Code respecting the right of contribution of public entities that are parties to a joint powers agreement, no public entity a party to this Agreement shall be jointly or severally liable upon any judgment for damages caused by a negligent or wrongful act or omission to act occurring in the performance of this Agreement, which judgment is rendered or imposed upon any one of the parties, unless the public entity shall have authorized or consented to the act or omission to act by an appropriately adopted resolution.
- d. Payments to Project Sponsors or for Developer-funded project reimbursements shall include reasonable requirements for indemnification and insurance, as appropriate for individual projects, and shall include requirements that Project Sponsors or other entities which construct any of the Projects defend and indemnify the RDIF Agency and the Parties.

Section 19.

Interpretation of Agreement

Nothing in this Agreement shall be construed to hold any Party liable to any other Party, or any person not a party hereto, for the design, construction, installation, inspection, operation, maintenance and/or repair of any of the Transportation Improvement Projects because a Party collected Regional Development Impact Fees that were used for the design, construction, installation, inspection, operation, maintenance and/or repair of any of the Transportation Improvement Projects. This Agreement is designed to implement the subvention or disbursement of public funds from one public agency to another and accordingly is not an agreement as defined in Government Code Section 895.

Section 20.

Manner of Exercise of Powers

The powers of this Agreement shall be exercised subject to the restrictions upon the manner of exercising of such powers by the County of Monterey, as provided in Section 6509 of the Government Code.

Section 21.
Sole Agreement

This Agreement is the sole agreement on the subject matters of this Agreement between the parties.

Section 22.
CEQA Lead Agency Designation

The Parties agree that for purposes of compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000, et. seq., for environmental review of the adoption of the Regional Development Impact Fee ("RDIF"), that TAMC shall be the lead agency, and all other Parties shall be responsible agencies. Prior to taking action to approve a Regional Development Impact Fee within its jurisdiction, each responsible agency shall certify that it has reviewed and considered the information contained in the environmental determination made by TAMC, which is the lead agency for adoption of the Regional Development Impact Fee for purposes of the California Environmental Quality Act (CEQA), Public Resources Code section 21000, et. seq.

Section 23.
Appeals

- a. If the applicant for a development project subject to the RDIF believes that the land use category in Exhibit "A" to this Agreement is not appropriate for his/her application, the applicant may propose a more appropriate development category as verified by a traffic analysis showing an alternative trip generation rate subject to approval by the RDIF Agency.
- b. If the applicant for a development project subject to the RDIF believes that the fee in Exhibit "A" to this Agreement is not appropriate for his/her application, the applicant may have prepared, at his/her own expense, a trip generation study conducted by a licensed traffic engineer that forecasts the anticipated peak hour trips for the proposed development utilizing any portion of the regional transportation system. The study procedure and results shall require the approval of the RDIF Agency.
- c. Regardless of whether or not the applicant has exercised his/her rights under subsections (a) or (b) above, an applicant who disputes the amount of an impact fee may file a written notice of appeal with the RDIF Agency Board of Directors, by service upon the Clerk of the RDIF Agency. The RDIF Agency Board of Directors shall render its decision by a majority vote of those members present

within 60 days of the filing of the appeal, and such decision shall constitute the final agency action.

Section 24.
Signatures

This Agreement may be signed in counterparts with the signature pages attached to form a complete document.

APPROVED BY:

[JURISDICTION]

By: _____
Its: _____

[JURISDICTION]

By: _____
Its: _____

[JURISDICTION]

By: _____
Its: _____

[ADDITIONAL PARTIES]

Exhibit "A"
Regional Development Impact Fee Amount

Subject to adjustments in the fees as provided in Section 13 hereof, the initial Regional Development Impact Fees shall be as follows:

LAND USE DESIGNATION	NORTH COUNTY	GREATER SALINAS	PENINSULA / SOUTH COAST	SOUTH COUNTY
Residential Average (dwelling unit)	\$5,464	\$3,644	\$3,154	\$4,608
Single-Family	\$6,167	\$4,113	\$3,586	\$5,200
Apartment	\$4,330	\$2,888	\$2,518	\$3,652
Condo/Townhome	\$3,776	\$2,518	\$2,196	\$3,184
Multi-Family / Secondary Unity	\$4,330	\$2,888	\$2,518	\$3,652
Retail (1,000 Sq. Ft.)	\$8,732	\$5,824	\$5,267	\$7,364
Office / Government (1,000 Sq. Ft.)	\$7,131	\$4,756	\$4,324	\$6,014
General Office	\$2,139	\$1,427	\$1,244	\$1,804
Government Office	\$780	\$520	\$453	\$658
Office Park	\$2,255	\$1,504	\$1,311	\$1,902
Business Park	\$2,603	\$1,736	\$1,514	\$2,195
Industrial / Agriculture (1,000 Sq. Ft.)	\$1,373	\$915	\$826	\$1,157
Light Industrial	\$4,491	\$2,995	\$2,612	\$3,788
Heavy Industrial	\$967	\$645	\$562	\$815
Warehouse	\$290	\$193	\$169	\$245
Manufacturing	\$2,462	\$1,642	\$1,431	\$2,076
Lodging (room)				
Hotel	\$5,265	\$3,511	\$3,061	\$4,440
Motel	\$3,628	\$2,420	\$2,110	\$3,059
Fee per Trip	\$644	\$430	\$375	\$543

DEFINITIONS:

LAND USE DESIGNATION	DEFINITION
Residential Average (dwelling unit)	
Single-Family	Single-family detached housing includes all single-family detached homes on individual lots.
Apartment	Apartments are rental dwelling units that are located within the same building with at least three other dwelling units, for example quadraplexes and all types of apartment buildings.
Multi-Family / Secondary Unit	Multi-family / Secondary (auxiliary) dwelling units are detached units located on the same lot as a single-family dwelling unit as living quarters for another party not of the main residence.
Condo/Townhome	Residential condominiums/townhouses are defined as ownership units that have at least one other owned unit within the same building structure. Both condominiums and townhouses are included in this land use.
Retail (1,000 Sq. Ft.)	Retail uses are generally shopping centers that contain a variety of retail shops and specialize in quality apparel; hard goods; and services, such as real estate offices, dance studios, florists and

EXEMPTIONS:

In addition to any exemptions from the levy of development impact fees provided by law, including, as applicable, the levy of development impact fees which are the subject of a vested subdivision map, the following development projects will be exempt from the Fee:

- A. The reconstruction of any building so long as the reconstructed building both continues a use of the same category as the prior use and generates the same or fewer trips as the original building and reconstruction commences and so long as the permit for reconstruction is issued within one (1) year from destruction of the building.
- B. Development within the Fort Ord Reuse Agency ("FORA") area that is subject to transportation improvement fees for transportation projects within the FORA plan area.
- C. Development pursuant to a development agreement that was entered prior to the Effective Date of the Joint Powers Agreement in accordance with the terms of the development agreement in effect prior to the Effective Date of the Joint Powers Agreement.

SR 68 Commuter Improvements	\$ 24,000,000	Rte 68 between Monterey and Salinas	Widen SR 68 from existing 4 lane section adjacent to Toro park west to Corral De Tierra.
Harris Road / Eastside Connector	\$ 114,000,000	City of Salinas	Construct 4-lane arterial from US 101 to Williams Road and an interchange at Harris Rd / US 101.
G-12 South	\$ 8,000,000	Unincorporated Monterey County	Widen San Miguel Cyn Rd to four lanes from just south of Moro Rd through Castroville Blvd. Add climbing lane on southbound San Miguel Cyn Rd just north of Strawberry Rd. Add two-way left-turn lane on San Miguel Cyn Rd between Castroville Blvd and Echo Valley Rd. Add a traffic signal at Echo Valley Rd.
G-12 North	\$ 40,000,000	Unincorporated Monterey County	Add a two-way left-turn lane on Hall Rd between San Miguel Cyn Rd and Elkhorn Rd. Widen Elkhorn Rd to four lanes from Hall Rd to Werner Rd.
Gloria Rd / US 101 Interchange	\$ 37,101,000	Gonzales	Re-align and reconstruct the Gloria Road / US 101 interchange. A Project Study Report is currently underway.
US-101 / South Soledad Interchange	\$ 18,810,413	South Soledad	Modify South Soledad interchange and construct related ramp improvements to accommodate future widening of US-101 to six lanes as well as the planned SR-146 Bypass from Front Street to Metz Road.
US-101 / North Soledad Interchange	\$ 17,490,970	North Soledad	Modify North Soledad interchange and construct related ramp improvements to accommodate future widening of US-101.
Walnut Ave / US 101 Interchange	\$ 45,460,000	Greenfield	Relocate and replace the existing Walnut Avenue / US 101 interchange. Cost estimate assumes selection of Alternative 3 from the Project Study Report currently being prepared.
First Street / US 101 Interchange	\$ 40,000,000	King City	Extension and grade separation over railroad tracks of San Antonio Drive from Lonoak Road to interchange of First Street and US 101.

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