

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

705 A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
April 26, 2012

**SUBJECT:** Transportation Uniform Mitigation Fee (TUMF) Program Reimbursement Agreement between the County and DR Horton Los Angeles Holding Company, Inc. for Clinton Keith Road improvements associated with Tract No. 29484.

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

- 1) Approve the subject Agreement between the County and DR Horton Los Angeles Holding Company, Inc. (Developer); and
- 2) Authorize the Chairman to execute the same.

**BACKGROUND:** The attached Reimbursement Agreement is a supplemental document to the TUMF Improvement and Credit Agreement for the same tract, which was approved by the Board on September 4, 2007.

Juan C. Perez  
Director of Transportation

(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

**SOURCE OF FUNDS:**

There are no General Funds used in this project.

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

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

APPROVE

BY:   
Tina Grande

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY:   
DALE A. GARDNER  
DATE: 4/24/12  
Departmental Concurrence

Dep't Recomm.:	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Policy
Per Exec. Ofc.:	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Policy

**Prev. Agn. Ref.** 09/04/07, Item 3.40 | **District:** 1/3 | **Agenda Number:**

**3.18**

The Honorable Board of Supervisors

RE: Transportation Uniform Mitigation Fee (TUMF) Program Reimbursement Agreement between the County and DR Horton Los Angeles Holding Company, Inc. for Clinton Keith Road improvements associated with Tract No. 29484.

April 26, 2012

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The attached Agreement provides a means by which the Developer's eligible costs for construction of certain improvements may be reimbursed for the amount by which the verified actual cost or TUMF unit cost assumptions (whichever is less) exceeds the Developer's TUMF obligation, as determined pursuant to the provisions in the TUMF Improvement and Credit Agreement.

The improvements include the construction of Clinton Keith Road along the frontage of Tract 29484. These road improvements are identified under the TUMF Program and are required by conditions of approval for the Tract. The physical improvements were substantially completed several years ago, but the County has just accepted the right-of-way into our maintained system in the last few months.

The Transportation Department has determined that the Developer would be eligible for a reimbursement amount not to exceed \$629,427 from the TUMF Program. Upon completion of improvements, acceptance by the County, and verification of actual costs, the Transportation Department will determine the actual reimbursement amount due to the Developer.

The payment of the reimbursement amount is subject to the improvements being scheduled for funding pursuant to the WRCOG Transportation Improvement Program (TIP), and WRCOG having funds available and appropriated for payment of the reimbursement amount.

**REIMBURSEMENT AGREEMENT  
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

**THIS REIMBURSEMENT AGREEMENT** ("Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the County of Riverside, a subdivision of the State of California ("County"), and DR Horton Los Angeles Holding Company, Inc., a California Corporation, with its principal place of business at 2280 Wardlow Circle, Suite 100 Corona, CA 92880 ("Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

**RECITALS**

WHEREAS, County and Developer are parties to an agreement dated September 4, 2007, entitled "Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.4 of the Credit Agreement provide that Developer is obligated to pay County the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and County 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 County 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, County has consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, County Ordinance No. 824, 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, County Ordinance No. 824, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. County 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 \$629,427 ("Reimbursement Amount"). WRCOG shall pay the Reimbursement Amount to County and the County shall be responsible for transmitting the Reimbursement Agreement 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 14.2, 14.3, and 14.4 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 County 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 Amount is made to Developer by WRCOG through County.

6.0 Affirmation of Credit Agreement. County 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. County and Developer

amendments of the Credit Agreement, except by this Agreement. County and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. County 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 14.5, and Sections 15.0 through 15.16.

**[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

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Dale A. Gardner  
County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:


By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman, County Board of Supervisors

ATTEST:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kecia Harper-Ihem  
Clerk of the Board

**DEVELOPER**

DR Horton Los Angeles Holding Company, Inc.  
A California corporation

By:   
\_\_\_\_\_  
Keith Alex  
Printed Name

Vice President  
\_\_\_\_\_  
Title

By:   
\_\_\_\_\_  
Diane Lyttle  
Printed Name

Assistant Secretary  
\_\_\_\_\_  
Title

## ACKNOWLEDGMENT

State of California  
County of Riverside )

On March 9, 2012 before me, Jennifer L. O'Leary, Notary Public  
(insert name and title of the officer)

personally appeared Keith Alex and Diane Lyttle,  
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



(Seal)

