

CITY OF DEL REY OAKS

650 CANYON DEL REY BLVD., DEL REY OAKS, CALIFORNIA 93940
PHONE (831) 394-8511 FAX (831) 394-6421

DATE: March 28, 2023

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Consider a Resolution Authorizing the City Manager to Sign a Supplemental Agreement with the Transportation Agency for Monterey County for the Fort Ord Regional Trail & Greenway Project

CEQA: The Transportation Agency for Monterey County (TAMC) is the lead agency on the FORTAG project. TAMC prepared and approved an Environmental Impact Report on the project in compliance with the California Environmental Quality Act (CEQA). As a responsible agency, the City of Del Rey Oaks and all other participating jurisdictions are required to consider whether the Environmental Impact Report is adequate and adopt the Mitigation Monitoring and Reporting Program and findings for decision as well. The City of Del Rey Oaks found the Environmental Impact Report adequate and adopted the Mitigation Monitoring and Reporting Program and findings at the April 28, 2020, City Council meeting. No further action regarding CEQA is required.

Recommended Action

That the Council adopt a resolution authorizing the City Manager to sign a Supplemental Agreement with the Transportation Agency for Monterey County (TAMC) for the Fort Ord Regional Trail & Greenway (FORTAG) project.

Background

The FORTAG project was conceived in 2012 as a regional active transportation corridor consisting of a 24.2-mile continuous bicycle and pedestrian trail with an open-space buffer on both sides. FORTAG will connect to 7.5 miles of existing Monterey Bay Sanctuary Scenic Trail, for a total 31.7 regional trail in the Monterey Peninsula that will connect with the existing and planned active transportation network, and will provide connections to unpaved trails in the Fort Ord National Monument.

On March 25, 2020 the TAMC Board of Directors approved the Final EIR, including the Mitigation Monitoring and Reporting Program, and the Master Plan for the FORTAG Project.

On April 28, 2020 the City of Del Rey Oaks approved the FORTAG Master Agreement and found the Environmental Impact Report adequate, and adopted the Mitigation Monitoring and Reporting Program and findings. Since then the Master Agreement has been revised at the request of several participating responsible agencies to clarify responsibilities, primarily through the upcoming

supplemental agreements required as responsible agencies move forward with constructing the sections located within their jurisdiction.

Discussion

At the time of approval for the Master Agreement covering all agencies involved in the 28-mile trail project, staff advised the Council that a Supplemental Agreement would be drafted to cover specific responsibilities of TAMC and the City relative to the Del Rey Oaks portion of the trail. The Supplemental Agreement for the segment through the City of Del Rey Oaks details the design and construction of that portion of the FORTAG Project as well as compliance with the covenants (i.e. mitigation measures, development, construction, operation, maintenance) of the Master Agreement for the trail segment.

Consistent with Section IV. of the Master Agreement, such mitigation measures include:

- A. The collection of trash from such receptacles on a reasonable, periodic basis
- B. The installation and maintenance of Dog Waste Disposal Bag Dispensers at the locations of the solid waste receptacles
- C. Causing the collection of litter along the CDR Segment on a reasonable, periodic basis
- D. Incorporating the CDR Segment into the police patrols of City, and cooperating with patrols by other Underlying Jurisdictions
- E. Installing and maintaining signage regarding Trail Safety and Courtesy
- F. Inspecting and maintaining the trail conditions along CDR Segment in good condition
- G. Developing monitoring and reporting methodology for sharing of information among the Underlying Jurisdictions to promote safety, reduce potential vandalism, and create and maintain a cohesive experience for FORTAG users

A copy of a Supplemental Monitoring and Reporting Program (MMRP) for the CDR segment is attached to the agreement as Exhibit 2.

Fiscal Impacts

There is no immediate fiscal impact of entering into the Master Agreement. Impacts to staffing resources and operations are expected to be minimal. Some increased costs for materials such as signs and Dog Waste Disposal Bag Dispensers are expected. Long-term maintenance and repair costs are unknown.

Attachments

- Resolution 2023-04
- Supplemental Agreement
- Master Agreement

Respectfully Submitted,

John Guertin
City Manager

RESOLUTION NO. 2023-04

A RESOLUTION OF THE COUNCIL OF THE CITY OF DEL REY OAKS
APPROVING THE SUPPLEMENTAL AGREEMENT FOR THE
FORT ORD REGIONAL TRAIL AND GREENWAY PROJECT

WHEREAS, the Fort Ord Regional Trail and Greenway Project (FORTAG Project) proposes construction of an approximately 28-mile continuous 12-foot wide paved bicycle and pedestrian trail with 2-foot wide unpaved shoulders and an open-space buffer on both sides. This trail will connect the Monterey Peninsula cities from the existing Monterey Bay Coastal Trail to the California State Monterey Bay University campus through the former Fort Ord open space area;

WHEREAS, as the Lead Agency, on March 25, 2020, the Transportation Agency for Monterey County (TAMC) Board of Directors approved the Final Environmental Impact Report, including a Mitigation Monitoring and Reporting Program, for the FORTAG Project; and

WHEREAS, on April 28, 2020, the City approved a Master Agreement and adopted the mitigation monitoring and reporting plan and findings for the FORTAG Project; and

WHEREAS, the FORTAG Project Supplemental Agreement for the segment through the City of Del Rey Oaks details the design and construction of that portion of the FORTAG Project as well as compliance with the covenants (i.e. mitigation measures, development, construction, operation, maintenance) of the Master Agreement for the trail segment.

NOW, THEREFORE, BE IT RESOLVED that the City of Del Rey Oaks approves the FORTAG Supplemental Agreement between the Transportation Agency for Monterey County, the City of Del Rey Oaks, and various other local public agencies, and authorizes the City Manager to execute the agreement.

INTRODUCED AND ADOPTED BY THE COUNCIL OF THE CITY OF DEL REY OAKS this 28TH day of March, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Scott Donaldson, Mayor

ATTEST:

John Guertin, City Clerk

**SUPPLEMENTAL AGREEMENT
TO
FORTAG MASTER AGREEMENT
CANYON DEL REY / STATE ROUTE 218 SEGMENT**

This Supplemental Agreement among the Transportation Agency for Monterey County (“TAMC”), and the City of Del Rey Oaks (“City”) supplements and is entered into pursuant to the MASTER AGREEMENT (the “Master Agreement”) by and among TAMC and City. For purposes of this Supplemental Agreement, TAMC and City may be referred to collectively as the “Parties.” The parties to the Master Agreement other than TAMC may be referred to collectively as the “Underlying Jurisdictions.”

RECITALS

This agreement is based on the following facts and circumstances:

- A. **Adoption of Measure X.** On November 6, 2016, a ballot measure known as the Transportation Safety & Investment Plan, or “Measure X,” was adopted by the voters of Monterey County. The measure is anticipated to generate an estimated \$20 million annually for a total of \$600 million over thirty years, through a retail transaction and use tax of three-eighths of one percent (3/8%). Among the transportation safety and mobility projects identified for funding through Measure X is the Fort Ord Regional Trail and Greenway (“FORTAG”). Approximately \$20 million in Measure X funding was identified in the Measure X Transportation Safety & Investment Expenditure Plan for the FORTAG proposal.
- B. **Approval and Adoption of Master Agreement.** On March 25, 2020, TAMC certified an Environmental Impact Report, made appropriate findings, and approved a Master Agreement among the Parties and Underlying Jurisdictions with respect to the development of FORTAG. City approved the Master Agreement on April 28, 2020.
- C. **FORTAG Project.** FORTAG is an approximate 28-mile continuous 12-foot-wide paved bicycle and pedestrian trail with an open-space buffer on both sides. A map designating the evaluated FORTAG alignment is attached to the Master Agreement as Exhibit B.
- D. **Receipt of Active Transportation Program Grant Funds.** As part of their rights and obligations under Measure X and the Master Agreement, TAMC and City coordinated in applying for, and TAMC received funds under the State of California’s Active Transportation Program for the development of a 1.5-mile segment of FORTAG within the jurisdiction of City, and including portions within the jurisdiction of Seaside and the

Monterey Peninsula Regional Parks District. (the “CDR Segment”). A map designating the approved alignment of CDR Segment is attached hereto as Exhibit 1.

NOW, THEREFORE, the Parties agree:

Section I.
Parties

The Parties to this Supplemental Agreement are City and TAMC.

Section II.
Effective Date

This Supplemental Agreement shall be effective, and a Party shall receive the benefits, and accept the obligations, described herein on the date that this Agreement is approved by the governing body of said Party.

Section III.
Implementation of Mitigation Measures

Consistent with Section IV. of the Master Agreement, and its environmental findings made in connection with the approval of the Master Agreement, City hereby adopts the Mitigation Measures listed in the Mitigation, Monitoring and Reporting Program (“MMRP”). More specifically, for the CDR Segment, such mitigation measures include:

- A. The collection of trash from such receptacles on a reasonable, periodic basis
- B. The installation and maintenance of Dog Waste Disposal Bag Dispensers at the locations of the solid waste receptacles
- C. Causing the collection of litter along the CDR Segment on a reasonable, periodic basis
- D. Incorporating the CDR Segment into the police patrols of City, and cooperating with patrols by other Underlying Jurisdictions
- E. Installing and maintaining signage regarding Trail Safety and Courtesy
- F. Inspecting and maintaining the trail conditions along CDR Segment in good condition
- G. Developing monitoring and reporting methodology for sharing of information among the Underlying Jurisdictions to promote safety, reduce potential vandalism, and create and maintain a cohesive experience for FORTAG users

A copy of a Supplemental MMRP for the CDR Segment is attached hereto and incorporated herein as Exhibit 2.

Section IV.
Covenants of TAMC

With respect to each party Underlying Jurisdiction and this Supplemental Agreement, TAMC shall:

- A. Funding Commitment. TAMC has, and shall continue to provide funding assistance to plan, engineer, and construct the CDR Segment.
- B. Planning Assistance. TAMC has, and shall continue to provide planning and development assistance, and manage the construction of the CDR Segment.
- C. Development and Construction. TAMC shall undertake the development and construction of the CDR Segment, consistent with the terms of the Active Transportation Program Grant Adoption Resolution G-19-31 and the Project Baseline Agreement between TAMC, Caltrans, and the California Transportation Commission.

Section V.
Covenants of City

- A. With respect to the CDR Segment of FORTAG, City shall:
 - 1. Continue to cooperate with TAMC in seeking funding for the development of segments of FORTAG within its jurisdiction.
 - 2. Accept and enforce all appropriate Mitigation and Monitoring conditions identified for the segment(s) of FORTAG within the boundaries of City, described in Section III and Exhibit 2.
 - 3. Undertake appropriate review and approval of plans and specifications for the CDR Segment of FORTAG within the jurisdiction of City.
 - 4. Accept ownership of that portion of the CDR Segment of FORTAG completed within the boundaries of City.
 - 5. Provide for the reasonable maintenance of the CDR Segment of FORTAG within the boundaries of City.

Section VI.
Mutual Covenants

- A. Covenants of Master Agreement Retained. Nothing in this Supplemental Agreement shall impede or replace the Covenants set forth in the Master Agreement, both Mutual Covenants and Covenants by TAMC and/or City.
- B. Term and Termination. This Supplemental Agreement shall remain in effect as to each Party from the date of approval until terminated as provided herein.
1. This Agreement may be terminated at any time by the mutual consent of both Parties, provided that 60 days' certified mail notice, as provided in Section XI.B., is given to all other Underlying Jurisdictions which are Parties to this Agreement.
- C. Indemnity by TAMC. As to construction of the CDR Segment by TAMC, neither City nor any of their respective governing bodies, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Supplemental Agreement. Notwithstanding Government Code section 895.6, it is also understood and agreed, pursuant to Government Code section 895.4, that TAMC shall fully defend, indemnify, and hold harmless City, and any of its respective governing bodies, elected officials, all its officers, agents, and employees from any liability imposed on City for injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Supplemental Agreement.
- Payments to FORTAG contractors shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities that provide services defend and indemnify TAMC and the Parties to this Supplemental Agreement.
- D. Indemnity by City. Neither TAMC, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City in connection with this Supplemental Agreement or any work or action taken with Measure X or funds related to the FORTAG Project. Notwithstanding Government Code section 895.6, it is also understood and agreed, pursuant to Government Code section 895.4, that City shall fully defend, indemnify, and hold harmless TAMC, its

governing body, and all its officers, agents, and employees, from any liability imposed on TAMC for injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by City pursuant to this Supplemental Agreement or any work or action taken with FORTAG.

Payments to FORTAG contractors hired by the Underlying Jurisdiction shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities which provide services defend and indemnify TAMC and the applicable Underlying Jurisdiction(s). To the extent that the Underlying Jurisdiction requires or permits a portion of a segment of FORTAG to be constructed by others not a party to the Master Agreement or this Supplemental Agreement, the Underlying Jurisdiction shall require that payments to FORTAG contractors shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities that provide services defend and indemnify TAMC and the applicable Underlying Jurisdiction(s).

- E. Mutual Indemnification Among Parties. Each Party to this Supplemental Agreement agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions for the indemnifying party or its officials, officers, employees, or agents. In the event of liability imposed upon any of the parties to this Supplemental Agreement, for injury which is caused by the negligent or wrongful act or omission of any of the Parties in the performance of this Supplemental Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to \$100. The party or parties directly responsible for the negligent or wrongful acts or omissions shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Supplemental Agreement.

Section VII.

Amendments

This Supplemental Agreement may be amended at any time, in writing, by an amendment approved by the Parties hereto; provided that no amendment shall modify the Master Agreement, except in accordance with Section V. of the Master Agreement.

Section VIII.

Integration of Agreements

This Supplemental Agreement, together with the Master Agreements, and TAMC Ordinance No. 2016-01, are the sole agreements on the subject matters of this Supplemental Agreement between and among the Parties with respect to FORTAG.

Section IX.

Miscellaneous

- A. **Arbitration.** Any controversy or claim between the Parties to this Supplemental Agreement, or between any Underlying Jurisdiction and TAMC with respect to disputes, demands, differences, controversies, or misunderstandings arising in relation to interpretation of this Supplemental Agreement, or any breach thereof, shall be submitted to and determined by arbitration. The party desiring to initiate arbitration shall give notice by mail of its intention to arbitrate to every other party to this Supplemental Agreement and/or Master Agreement, depending on the nature of the dispute. Such notice shall designate as “respondents” such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within 10 business days of service upon it of such notice, file a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within 20 business days of the service of the initial demand for arbitration, the initiating party and the respondent shall each designate a person to act as an arbitrator. The two designated arbitrators shall mutually designate a third person to act as arbitrator. The three arbitrators shall proceed to arbitrate the matter in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure, sections 1280, et seq.. The Parties to this Agreement agree that the decision of the arbitrators shall be both binding and final.
- B. **Notices.** Any notice or instrument required to be given or delivered by mail shall be deposited in any United States Post Office, registered or certified, postage prepaid, and addressed to the addresses of the Parties as shown on such in Exhibit A of the Master Agreement. Such notice shall be deemed to have been received by the party to whom the same is addressed at the expiration of 72 hours after deposit of the same in the United States Post Office. All other notices may be provided by regular mail to the addresses shown in Exhibit A of the Master Agreement, and/or to by facsimile or email transmission to the numbers and addresses shown associated with the respective parties. Receipt of such notices shall be deemed complete by close of business on the next business day after transmission.
- C. **Partial Invalidity.** If any one or more of the terms, provisions, sections, promises, covenants, or conditions of this Supplemental Agreement shall, to any extent, be adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court

of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. The governing body of each of the Parties hereto hereby declares that it would have adopted each section, subsection, sentence, clause, phrase, or portion of this Supplemental Agreement irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Supplemental Agreement be declared invalid or unenforceable.

- D. Governing Law; Interpretation. This Supplemental Agreement shall be deemed to have been made, and shall be construed and interpreted, in accordance with the laws of the State of California. This Supplemental Agreement has been arrived at through good faith negotiation between the Parties; each Party waives the provisions of Civil Code section 1654 concerning the interpretation of this Supplemental Agreement.
- E. No Third-Party Beneficiaries. This Supplemental Agreement is intended solely for the benefit of the parties to this Supplemental Agreement, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against TAMC, Del Rey Oaks, Seaside, the District, or any Underlying Jurisdiction.
- F. Assignment. The Parties hereto shall not assign any rights or obligations under this Supplemental Agreement with the written consent of the other Parties.
- g. Waiver. Any waiver of any terms of this Supplemental Agreement shall be in writing signed by each applicable Party thereto. A waiver of any of the terms and conditions of this Supplemental Agreement shall not be construed as a waiver of any other terms or conditions in this Supplemental Agreement.
- G. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret the terms of this Agreement.
- H. Counterparts. This Supplemental Agreement may be signed in counterparts with the signature pages attached to form a complete document.

Section X.

Execution and Signatures

The Board of Directors of TAMC and the City Council have each authorized the execution of this Agreement, as evidenced by the authorized signatures below on the dates specified below. This Agreement may be signed in counterparts with the signature pages attached to form a complete document.

APPROVED BY:

[Signatures on following pages]

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: _____

Its: _____

Date: _____

Approved as to form:

TAMC Counsel

CITY OF DEL REY OAKS

By: _____

Its: _____

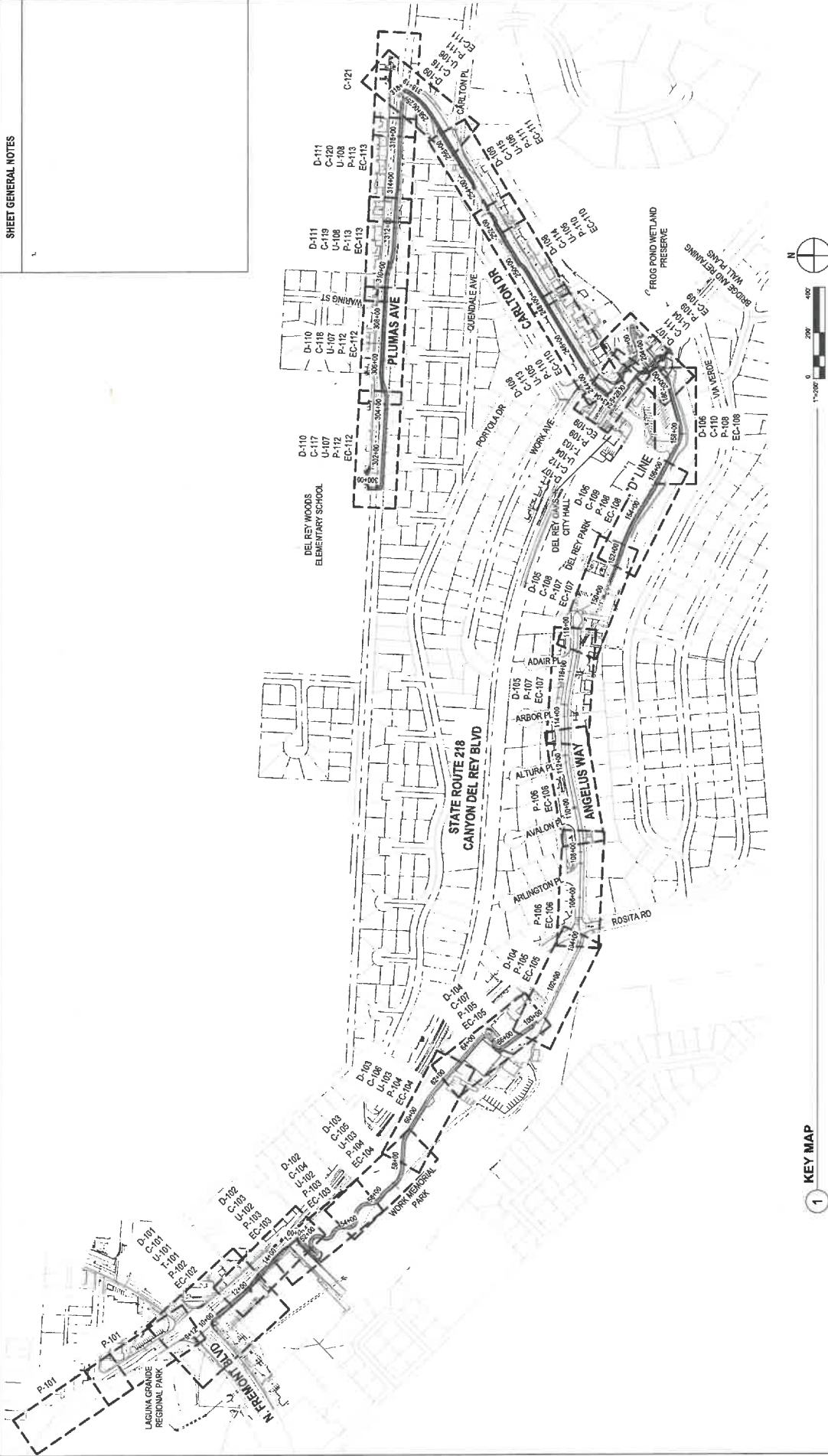
Date: _____

Approved as to form:

City Counsel

EXHIBIT 1
MAP OF SEGMENT ONE ALIGNMENT

SHEET GENERAL NOTES



1 KEY MAP

100% SUBMITTAL

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2023</p>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																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PRELIMINARY DESIGN NOT FOR CONSTRUCTION

EXHIBIT 2
SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

EXHIBIT 2
SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Action Required	Monitoring Timing	Monitoring Frequency
<p>AG-4(b): Install Fencing and Signage Prior to Operation</p> <p>Wherever the Trail is constructed within 50 feet of agricultural fields, fencing shall be installed between the Trail and adjacent agricultural operations. In addition, signs clearly indicating "No Trespassing" shall be installed at key locations near agricultural operations, to be identified by the implementing entity for Trail segments adjacent to agriculture in consultation with agricultural operators. The signs shall specify the legal ramifications for trespassing on adjacent properties. Additional signage shall be installed, where appropriate, reminding Trail users that dogs must be on leash and remain on the trail, that littering is prohibited, and that dog waste must be removed.</p> <p>The implementing entity shall be responsible for ensuring the fencing and signs are properly maintained and shall replace fencing and signs when they are removed or damaged such that they are no longer functional.</p>	Maintain fencing and signage and replace as needed	During operation	Ongoing during operation
<p>AG-4(c): Regularly remove Solid Waste and Litter during Operation</p> <p>Once the Trail is open for public use, the implementing entity shall ensure that solid waste is collected from trash receptacles on a reasonable, periodic basis to ensure that the trash and recycling receptacles located along the Trail do not overflow. The frequency shall be determined by the implementing entity and may vary seasonally, with more frequent collection in the summer months when the Trail is busy.</p> <p>The implementing entity shall also be responsible for collecting litter along the Trail. If litter leaves the Trail ROW, the implementing entity shall ensure that the litter in the vicinity of the Trail that is reasonably attributed to Trail use is removed within a reasonable time frame. Access to agricultural fields for the purpose of litter removal shall be coordinated with on-site agricultural operators, taking into account pesticide/fumigant restrictions and the goal of minimizing soil compaction or direct contact with crops. The implementing entity shall not enter adjacent agricultural fields without express permission by the agricultural operator. All solid waste and recyclable materials shall be properly disposed.</p>	Collect litter attributed to trail use and remove solid waste from trash receptacles on a reasonable, periodic basis	During operation	Ongoing during operation

<p>AQ-4: Install Dog Waste Facilities</p> <p>Trail construction shall include installation of dog waste disposal bag dispensers with a waste receptacle at every amenity area where trash cans are provided. Waste disposal and bag refills shall be incorporated into the Master Agreement for Trail maintenance through Supplemental Agreements.</p>	<p>Install dog waste disposal facilities consistent with the measure and maintain throughout operation.</p>	<p>Install prior to operation; maintain during operation</p>	<p>Once prior to operation; ongoing during operation</p>
<p>PS-1: Ensure Adequate Police Monitoring and Safety Provisions for Each Portion of the FORTAG Alignment</p> <p>Prior to the construction and operation of any segment or portion of FORTAG, the project Master Agreement will be developed and signed by relevant jurisdictional parties, which will include provisions requiring the entry into Supplemental Agreements at the time that actual design and construction occurs. These Supplemental Agreements shall specify: 1) maintenance activities and frequency, including trash collection; 2) safety features or provisions (e.g., lighting, fencing, signage) determined appropriate by local law enforcement in consideration of potential for homeless/transient activity, illegal camping, or criminal activity in the particular trail segment; 3) safety patrol responsibility, frequency, and reporting procedures; 4) protocol for illegal camping and loitering; and 5) monitoring and reporting methodology and frequency, in consideration of ongoing reports to local jurisdictions responsible for maintenance, law enforcement and monitoring. The Supplemental Agreements shall also identify adaptive management options if public safety and law enforcement are determined to be an ongoing issue.</p>	<p>In the Supplemental Agreements to the Master Agreement, include provisions to ensure maintenance, safety, rule enforcement, and police service for the trail.</p>	<p>Prior to the construction and operation of any segment or portion of FORTAG</p>	<p>Once</p>

FORTAG MASTER AGREEMENT

This MASTER AGREEMENT (the "Agreement") is entered into by and among the Transportation Agency for the County of Monterey ("TAMC"), the County of Monterey ("County"), the City of Del Rey Oaks ("Del Rey Oaks"), the City of Marina ("Marina"), the City of Monterey ("Monterey"), the City of Seaside ("Seaside"), the Monterey Peninsula Regional Parks District ("MPRPD"), the University of California, Santa Cruz ("UCSC"), and California State University at Monterey Bay ("CSUMB"). TAMC, the County, the cities named herein, the District, and UCSC and CSUMB may be referred to collectively as the "Parties." The Parties other than TAMC may be referred to collectively as the "Underlying Jurisdictions." The notice and contact information of the Parties are attached hereto as Exhibit A.

RECITALS

This agreement is based on the following facts and circumstances:

- A. **Adoption of Measure X.** On November 6, 2016, a ballot measure known as the Transportation Safety & Investment Plan, or "Measure X," was adopted by the voters of Monterey County. The measure is anticipated to generate an estimated \$20 million annually for a total of \$600 million over thirty years, through a retail transactions and use tax of three-eighths of one percent (3/8%). Among the transportation safety and mobility projects identified for funding through Measure X is the Fort Ord Regional Trail And Greenway ("FORTAG"). Approximately \$20 million in Measure X funding was identified in the Measure X Transportation Safety & Investment Expenditure Plan for the FORTAG proposal.
- B. **FORTAG Project.** FORTAG has been proposed as an approximately 27-mile continuous 12-foot wide paved bicycle and pedestrian trail with an open-space buffer on both sides. FORTAG is proposed to extend over and within the jurisdiction of each of the Parties hereto. TAMC was designated the Lead Agency for review of the FORTAG proposal under environmental laws.
- C. **Environmental Documentation.** In compliance with the California Environmental Quality Act ("CEQA") TAMC has prepared and certified the FORTAG Final EIR (SCH # 2019060053), and has approved a Mitigation Monitoring and Reporting Plan, and has further adopted findings with respect thereto. A map designating the evaluated FORTAG alignment is attached hereto as Exhibit B.

- D. **Need for Collective and Coordinated Action.** In order to ensure the efficient and effective development of FORTAG, and to avoid segmentation of the project, the Parties agree on the need for collective and coordinated actions by the Parties, including the possible dedication of rights of way, and the need to maintain any improvements approved within a Parties' jurisdiction.
- E. **Mitigation of Regional Transportation Impacts of Local Development and Promotion of Active Transportation.** Development, implementation and maintenance of FORTAG, as it may be approved under applicable environmental laws, is anticipated to: assist in the mitigation of transportation impacts of local development; reduce greenhouse gasses; improve the health of residents and visitors by enhancing accessibility and providing a safe connection between residential areas, schools, workplaces, regional parks, and city services; provide community health benefits from active transportation routes and stress reducing enjoyment of open spaces; and create economic benefits from associated retail, hospitality, and competitive events.
- F. **Priority for Eligibility for Matching Funds or Other Funding.** The Parties also agree that demonstration of cooperative, collective and coordinated actions with respect to FORTAG are likely to enhance the ability of the Parties to seek and obtain additional funding from State, Federal and/or other avenues for FORTAG.
- G. **Intent and Purpose of this Agreement.** The overall intent of this Agreement is to effectuate FORTAG by having TAMC undertake the primary planning, development and construction of FORTAG with the engagement and approval of the Underlying Jurisdictions, as more fully described in this Master Agreement and by having the Underlying Jurisdiction(s) accept ownership and responsibility for completed segments of FORTAG and to maintain and operate FORTAG as cohesively as possible for the health, safety and benefit of the public. The purpose of this Agreement is to set forth the rights and responsibilities of the Parties to fulfill this overall intent.

NOW, THEREFORE, the Parties agree:

Section I. **Parties**

The Parties to this Agreement are those parties that are signatory hereto, or signatory in the future, which include the County of Monterey, Del Rey Oaks, Marina, Monterey, Seaside, UCSC, CSUMB, MPRPD and TAMC.

Section II.
Effective Date

This Agreement shall be effective as to a Party, and that Party shall receive the benefits and accept the obligations, described herein on the date that this Agreement is approved by the governing body of said Party.

Section III.
Covenants of TAMC

With respect to each Underlying Jurisdiction that is a Party to this Agreement, TAMC shall:

- A. Funding Commitment. TAMC shall provide funding assistance to a Party, consistent with the Measure X Investment Plan, of Measure X Funds for the planning, development and construction of FORTAG segments, as such segments are approved by an Underlying Jurisdiction through a Supplemental Agreement pursuant to Section V.A., and funding is available. No Underlying Jurisdiction shall be required to contribute funds towards the planning or construction of a FORTAG segment; provided TAMC shall not be required to pay for staff time or other resources of an Underlying Jurisdiction.
- B. Grant Assistance. TAMC shall assist Underlying Jurisdictions with applying for and obtaining grant funding for the construction, repair, or re-construction of approved FORTAG segments.
- C. Planning Assistance. TAMC shall provide significant planning and development assistance for the construction of FORTAG segments, as such segments are approved by an Underlying Jurisdiction and funding is available.
- D. Development and Construction. TAMC shall, with the consent of the Underlying Jurisdiction, undertake the development and construction of FORTAG segments that have received final design and alignment approval by the Underlying Jurisdiction through a Supplemental Agreement.

Section IV.
Covenants of Underlying Jurisdictions

- A. With respect to the entirety of FORTAG:
 - 1. Cooperation with TAMC and other Underlying Jurisdictions. Each Party shall cooperate with TAMC and each other Party in order to fulfill the intent of this Agreement and the FORTAG Project, being the funding, development and

operation of a sustainable active bicycle and pedestrian trail connecting Underlying Jurisdictions, existing trails, and communities. Such cooperation shall not require any Party to approve or enter into a Supplemental Agreement for any segment within that Party's underlying jurisdiction.

2. Public Outreach and Education. Each Party shall participate in periodic public outreach and educational efforts, designed to encourage and educate the public on responsible trail use and preservation of the open space and vistas made available by FORTAG, as well as respect for the flora and fauna found along FORTAG's alignment and the greater community.

B. With respect to each segment of FORTAG, including any segment phase, that is approved by an Underlying Jurisdiction, such approving Party shall:

1. Cooperate and assist TAMC in developing and finalizing designs and in seeking funding for the development of segments (or phases of segments) of FORTAG within its jurisdiction.
2. Accept and enforce all appropriate mitigation and monitoring conditions identified in FORTAG environmental documents for and specific to the segment(s) of FORTAG within the boundaries of the Underlying Jurisdiction.
3. Incorporate the FORTAG Project alignment applicable to the boundaries of the Underlying Jurisdiction into planning and other entitlement documents as necessary and appropriate, subject to final design and alignment approval by the Underlying Jurisdiction, after applicable environmental review by that Underlying Jurisdiction.
4. Undertake appropriate review and approval of plans and specifications for each segment of FORTAG to be developed and constructed within the boundaries of the Underlying Jurisdiction in accordance with any Supplemental Agreement.
5. Dedicate land or easement rights to TAMC or agreed upon third parties, as necessary, to permit the development of FORTAG in accordance with the final design specifications approved by the Underlying Jurisdiction pursuant to an approved Supplemental Agreement.
6. To the extent allowed by law, require the dedication of rights in entitlement documents for properties not owned by the Underlying Jurisdiction, and,

where appropriate, require the construction of segment alignments as a condition of approval for new development applications.

7. Pursuant to a Supplemental Agreement, accept ownership of the segment(s) of FORTAG completed within the boundaries of the Underlying Jurisdiction. The Underlying Jurisdiction may, in its reasonable discretion, cause portions of segments to be owned or retained by other responsible parties, with the consent and approval of TAMC, but only for the purpose of ensuring compliance with the Master Agreement and if necessary any applicable Supplemental Agreement.
8. Provide for the reasonable maintenance of the segment(s) of FORTAG completed with the boundaries of the Underlying Jurisdiction.
9. Adopt and enforce such reasonable use and operations rules and regulations as the Underlying Jurisdiction deems necessary and appropriate for the segment(s) of FORTAG completed within the boundaries of the Underlying Jurisdiction.

Section V.

Mutual Covenants

- A. Design and Development of Segment Phases. As any given segment (or phase thereof) of FORTAG is identified by TAMC and an Underlying Jurisdiction for development and receives sufficient funding therefor, TAMC and the Underlying Jurisdiction for such segment shall enter into a Supplemental Agreement. Each Supplemental Agreement will, among other things, specify in greater detail the manner in which the parties will comply with these covenants, consistent with the terms and conditions of relevant funding agreements, and/or such other arrangements between the applicable Parties with respect to trail connectivity. Such Supplemental Agreements shall be duly approved by the applicable parties and a Memorandum of Supplemental Agreement, identifying the basic terms of such agreements, including all funding therefore, shall be attached to this Master Agreement in subsequent exhibits. By way of example, it is anticipated that the City of Del Rey Oaks, the Monterey Peninsula Parks District, the City of Seaside, and TAMC will enter into a Supplemental Agreement soon after their respective approvals of this Master Agreement, and in connection therewith, will receive funds from an Active Transportation Grant. The basic terms of the "Phase One Canyon Del Rey/SR 218 Segment" Supplemental Agreement, consistent with grant funding requirements, will be memorialized and attached to this Master Agreement as Exhibit C. The Parties agree that any such

Memorandum of Supplemental Agreement may be attached to this Master Agreement without further action by the Underlying Jurisdictions.

- B. Term and Termination. This Agreement shall remain in effect as to each Underlying Jurisdiction from the date of approval until terminated as provided herein.
1. This Agreement may be terminated at any time by the mutual consent of all the Parties.
 2. This Agreement may be terminated as to TAMC and an Underlying Jurisdiction upon the mutual consent, which shall not be unreasonably withheld, of TAMC and the Underlying Jurisdiction, provided that 60 days' certified mail notice, as provided in Section IX.B., is given to all other Underlying Jurisdictions that are Parties to this Agreement.
- C. Indemnity by TAMC. With regard to construction of a FORTAG segment by TAMC, the Underlying Jurisdiction, its governing body, elected officials, any officer, consultant, agent, or employee thereof shall not be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Agreement. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that TAMC shall fully defend, indemnify, and hold harmless an Underlying Jurisdiction, and its governing body, elected officials, all its officers, agents, and employees from any liability imposed on the Underlying Jurisdiction for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Agreement.
- Agreements with FORTAG contractors shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities that provide services defend and indemnify TAMC and the applicable Underlying Jurisdiction(s).
- D. Indemnity by Underlying Jurisdiction. Neither TAMC, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by an Underlying Jurisdiction in connection with this Agreement or any work or action taken by an Underlying Jurisdiction with Measure X or other funds related to the FORTAG Project. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that the Underlying Jurisdiction shall fully

defend, indemnify and hold harmless TAMC, its governing body, and all its officers, agents, and employees, from any liability imposed on TAMC for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the Underlying Jurisdiction pursuant to this Agreement or any work or action taken by an Underlying Jurisdiction related to the FORTAG Project.

Agreements with FORTAG contractors hired by the Underlying Jurisdiction shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities that provide services defend and indemnify TAMC and the applicable Underlying Jurisdiction(s). To the extent that the Underlying Jurisdiction requires or permits a portion of a segment of FORTAG to be constructed by others not a party to this Master Agreement, the Underlying Jurisdiction shall require that agreements with FORTAG contractors shall include reasonable requirements for indemnification and insurance, as appropriate for individual Project segments, and shall include requirements that FORTAG contractors or other entities that provide services defend and indemnify TAMC and the applicable Underlying Jurisdiction(s).

- E. Mutual Indemnification Among Parties. Except as otherwise provided in this Agreement, each Party to this Agreement agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent or wrongful acts or omissions for the indemnifying party or its officials, officers, employees or agents. In the event of liability imposed upon any of the Parties to this Agreement, for injury that is caused by the negligent or wrongful act or omission of any of the Parties in the performance of this Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to One Hundred Dollars (\$100). The party or parties directly responsible for the negligent or wrongful acts or omissions shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Agreement.
- F. Respect for Land Use Authority and Implementation of FORTAG. This Master Agreement is evidence of the Parties' mutual intent to fund, design, construct and operate and maintain an inter-connected trail and bikeway within and between the jurisdictional boundaries of the Underlying Jurisdiction. TAMC and each Underlying Jurisdiction acknowledges the land use authority of each Underlying Jurisdiction and covenants not to construct any segment of FORTAG without the consent and approval of the applicable Underlying Jurisdiction by means of a Supplemental Agreement. Each Underlying Jurisdiction, in turn, acknowledges the existing and future significant commitment of TAMC in the implementation of FORTAG for the benefit of the

Underlying Jurisdiction and covenants to work towards incorporating FORTAG into its land use planning.

Section VI.
Amendments

This Agreement may be amended at any time by a written amendment approved by all of the Parties as evidenced by approval by the governing board or council of each Party.

Section VII.
Sole Agreements

This Agreement, together with the Memorandum of Understanding Re Designation of Lead Agency, approved by TAMC on September 27, 2017, are the sole agreements on the subject matters of this Agreement between and among the Parties with respect to FORTAG. No provision in either of those agreements shall preclude an Underlying Jurisdiction from exercising its discretionary authority for final design specifications and alignment, following appropriate environmental review as may be required. The parties acknowledge that Supplemental Agreements, as described in Section V. may be approved and attached as exhibits to this Master Agreement without changing or otherwise amending the provisions described in this Agreement.

Section VIII.
CEQA Lead Agency Designation

Consistent with that Memorandum of Understanding approved by TAMC on September 27, 2017, the Parties confirm that for purposes of compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000, et. seq., for environmental review of the FORTAG proposal, that TAMC is the lead agency, and all other Parties are responsible agencies. Prior to taking action to approve this Agreement and any FORTAG segment within its jurisdiction, each Underlying Jurisdiction shall certify that it has complied with the appropriate provisions of the California Environmental Quality Act as required by law.

Section IX.
Miscellaneous

- A. Dispute Resolution. If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section IX(A).

1. **Duty to Meet and Confer.** The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Parties all the information in its possession that is relevant to the dispute, so that all Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, any disputing Party may proceed to mediation or judicial resolution pursuant to subsections (2) and (3).
 2. **Mediation.** If meeting and conferring do not resolve the dispute, and if all disputing Parties wish to pursue mediation, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the Parties may mutually agree upon. Any disputing Party may terminate the mediation if it fails to produce agreement within forty-five (45) days from selection of the mediator. The expenses of such mediation shall be shared equally between the disputing Parties.
 3. **Judicial Resolution.** If the dispute is not or cannot be resolved by meeting and conferring and/or mediation, then any disputing Party may commence an action in the Superior Court of Monterey County.
- B. **Notices.** Any notice or instrument required to be given or delivered by mail under this Agreement shall be deposited with the United States Postal Service, registered or certified mail, postage prepaid, and addressed to the addresses of the Parties as shown on Exhibit A. Such notice shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States mail. All other notices may be provided by regular mail to the addresses shown in Exhibit A, and/or to by facsimile or email transmission to the numbers and addresses shown associated with the respective parties, also in Exhibit A. Receipt of such notices shall be deemed complete by close of business on the next business day after transmission.
- C. **Partial Invalidity.** If any one or more of the terms, provisions, sections, promises, covenants, or conditions of this Agreement shall, to any extent, be adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. The governing body of each of the Parties hereby declares they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Agreement irrespective of the fact that any one or more sections, subsections,

sentences, clauses, phrases, or portions of this Agreement be declared invalid or unenforceable.

- D. Governing Law; Interpretation. This Agreement shall be deemed to have been made, and shall be construed and interpreted, in accordance with the laws of the State of California. This Agreement has been arrived at through good faith negotiation between the Parties; each Party waives the provisions of Civil Code Section 1654 concerning the interpretation of this Agreement.
- E. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties to this Agreement, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against the Parties.
- F. Assignment. The Parties hereto shall not assign any rights or obligations under this Agreement without the written consent of all the other Parties.
- G. Waiver. Any waiver of any terms of this Agreement shall be in writing signed by each applicable Party thereto. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- H. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret the terms of this Agreement.

Section X.
Execution and Signatures

The Board of Directors of TAMC, the Board of Supervisors of the County of Monterey, the city councils of the cities enumerated herein, and the appropriate approving bodies for UCSC, MPRPD and CSUMB, have each authorized the execution of this Agreement, as evidenced by the authorized signatures below on the dates specified below. This Agreement may be signed in counterparts with the signature pages attached to form a complete document.

APPROVED BY:

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: 
Its: Executive Director
Date: 02/09/2021

Approved as to form:

Katherine A. Hansen
TAMC Counsel

COUNTY OF MONTEREY

By: _____
Its: _____
Date: _____

Approved as to form:

County Counsel

CITY OF DEL REY OAKS

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

CITY OF MARINA

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

APPROVED BY:

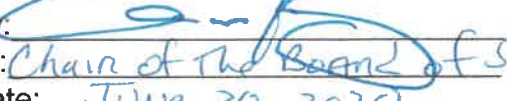
TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: _____
Its: _____
Date: _____

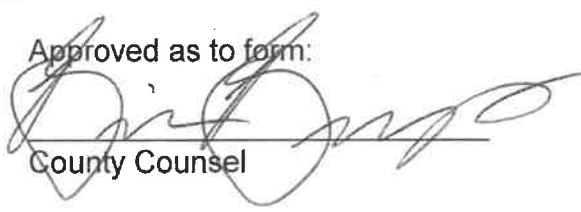
Approved as to form:

TAMC Counsel

COUNTY OF MONTEREY

By: 
Its: Chair of the Board of Supervisors
Date: JUNE 30, 2020

Approved as to form:



County Counsel

CITY OF DEL REY OAKS

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

CITY OF MARINA

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

APPROVED BY:

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: _____
Its: _____
Date: _____

Approved as to form:

TAMC Counsel

COUNTY OF MONTEREY

By: _____
Its: _____
Date: _____

Approved as to form:

County Counsel

CITY OF DEL REY OAKS

By: 
Its: City Manager
Date: 7/1/20

Approved as to form:



City Attorney

CITY OF MARINA

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

APPROVED BY:

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: _____
Its: _____
Date: _____

Approved as to form:

TAMC Counsel

COUNTY OF MONTEREY

By: _____
Its: _____
Date: _____

Approved as to form:

County Counsel

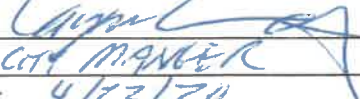
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By: _____
Its: _____
Date: _____

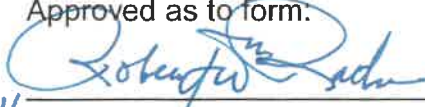
Approved as to form:

City Attorney

CITY OF MARINA

By: 
Its: CITY MANAGER
Date: 4/23/20

Approved as to form:


for the City Attorney

CITY OF MONTEREY

By: Hans Weber
Its: City Manager
Date: 06/24/2020

Approved as to form:

Christine Davis
City Attorney

CITY OF SEASIDE

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

By: _____
Its: _____
Date: _____

Approved as to form:

Legal Counsel


CALIFORNIA STATE UNIVERSITY AT MONTEREY BAY

By: _____
Its: _____
Date: _____

Approved as to form:

Legal Counsel

EXHIBIT A
NOTICE / CONTACT INFORMATION

TAMC	Executive Director 55-B Plaza Circle Salinas, CA 93901 (831) 775-0903 Name @tamc.org
COUNTY OF MONTEREY	Title Address Salinas, CA 93901 (831) Email address
CITY OF DEL REY OAKS	Title 650 Canyon Del Rey Del Rey Oaks, CA 93940 (831) Email address
CITY OF MARINA	Title 211 Hillcrest Ave. Marina, CA 93933 (831) Email address
CITY OF MONTEREY	Hans Uslar, City Manager 580 Pacific Street Monterey, CA 93940 (831) 646-3760 uslar@monterey.org
CITY OF SEASIDE 	Craig Malin, City Manager 440 Harcourt Ave. Seaside, CA 93955 (831) 899-6701 cmalin@ci.seaside.ca.us w/ Copy to cityattorney@ci.seaside.ca.us
UNIVERSITY OF CALIFORNIA, SANTA CRUZ	Title ADDRESS ADDRESS Phone Email address

CALIFORNIA STATE UNIVERSITY AT MONTEREY BAY	Title ADDRESS ADDRESS Phone Email address
MONTEREY PENINSULA REGIONAL PARK DISTRICT	Title ADDRESS ADDRESS Phone Email address

Exhibit B

Transportation Agency for Monterey County
Fort Ord Regional Trail and Greenway Project

Figure 2-7 Trail Segments¹



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Additional data provided by Alta Planning + Design, 2019.