

TAMC-MPRPD FORTAG AGREEMENT

This AGREEMENT (the “Agreement”) is entered into by and among the Transportation Agency for the County of Monterey (“TAMC”) and the Monterey Peninsula Regional Park District (“MPRPD”), referred to collectively as the “Parties.”

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. A map designating the proposed FORTAG alignment through MPRPD property (commonly known as the “Frog Pond Preserve”) is attached hereto as Exhibit A.
- 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.

- 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, 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 MPRPD and TAMC.

Section II.
Effective Date

This Agreement shall be effective when approved by the governing body of each Party.

Section III.
Covenants of TAMC

TAMC shall:

- A. Funding Commitment. TAMC shall provide funding assistance to MPRPD, 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 MPRPD and funding is available. MPRPD shall not be required to contribute funds towards the planning or construction of a FORTAG segment; TAMC shall not be required to pay for staff time or other resources of MPRPD.
- B. Grant Assistance. TAMC shall assist MPRPD 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 MPRPD and funding is available.
- D. Development and Construction. TAMC shall, with the consent of MPRPD, undertake the development and construction of FORTAG segments.

Section IV.
Covenants of MPRPD

MPRPD shall:

- 1. Cooperation with TAMC. MPRPD shall cooperate with TAMC 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.
- 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.

With respect to the segment of FORTAG through MPRPD that is hereby approved by MPRPD and identified in Exhibit A, MPRPD shall:

3. 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.
4. 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 MPRPD (without cost or expense to MPRPD).
5. 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.
6. Provide for the reasonable maintenance of the segment(s) of FORTAG completed within the boundaries of MPRPD.
7. Adopt and enforce such reasonable use and operations rules and regulations as MPRPD deems necessary and appropriate for the segment(s) of FORTAG completed through MPRPD property.

Section V.
Mutual Covenants

- A. Design and Development of Segment Phases. As any given segment (or phase thereof) of FORTAG through MPRPD property is identified by TAMC and MPRPD for development and receives sufficient funding therefor, TAMC and MPRPD shall enter into a Supplemental Agreement specifying in greater detail the manner in which the parties will comply with these covenants, consistent with the terms and conditions of relevant funding agreements.
- B. Term and Termination. This Agreement shall remain in effect until terminated as provided herein.
- C. Indemnity by TAMC. With regard to construction of a FORTAG segment by TAMC, MPRPD, 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 MPRPD, and its governing body, elected officials, all its officers, agents, and employees from any liability imposed on MPRPD 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 MPRPD.

Section VI. **Amendments**

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

Section VII. **Sole Agreement**

This Agreement is the sole agreement on the subject matter of this Agreement between and among the Parties with respect to FORTAG. The parties acknowledge that Supplemental Agreements, as described in Section V. may be approved and attached as exhibits to this 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. MPRPD certifies that it has reviewed and considered the information relevant to the section of FORTAG running through MPRPD property contained in the environmental documents certified by TAMC.

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 Parties' then current designated primary address for receipt of mail. 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 and MPRPD 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.

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

By: _____
Its: _____
Date: _____

Approved as to form:

TAMC Counsel

MONTEREY PENINSULA REGIONAL PARK DISTRICT

By: _____

Its: _____

Date: _____

Approved as to form:

Legal Counsel

MPRPD-Proposed