

# Attachment F

This page intentionally left blank.

## AGREEMENT BETWEEN

### COUNTY OF MONTEREY AND MONTEREY BAY AIR RESOURCES DISTRICT

This agreement is made and entered on \_\_\_\_\_, 2020 by and between the Monterey Bay Air Resources District (“MBARD”) (aka Monterey Bay Unified Air Pollution Control District), a California Unified Air Pollution Control District, and the County of Monterey (“County”), a political subdivision of the State of California, (collectively “the Parties”) with reference to the facts set forth herein.

#### RECITALS

- A. On October 4, 2005, the Board of Supervisors of the County of Monterey approved land use entitlements for the East Garrison project located on the former Fort Ord, including a Combined Development Permit consisting of a Vesting Tentative Subdivision Map for the subdivision of 244 acres to create parcels for up to one thousand four hundred (1,400) dwelling units (plus up to seventy (70) second units, each on the same lot as a residential unit), 75,000 square feet of commercial buildings, 11,000 square feet of public buildings, and 100,000 square feet of artist studio/public uses; Use Permit for tree removal; General Development Plan; Use Permit to allow development on slopes over thirty percent (30%); and Design Approval (hereafter “East Garrison Combined Development Permit”).
- B. The final maps for the East Garrison project have been filed in the Office of the Monterey County Recorder (Phase 1 is filed at Volume 24 of Cities and Towns, Page 7; Phase 2 is filed at Volume 24 of Cities and Towns, Page 41; and Phase 3 is filed at Volume 24 of Cities and Towns, Page 54).
- C. The Combined Development Permit was issued subject to conditions of approval, including condition of approval number 184 (“COA No. 184”) which provides: *“The applicant shall pay the Planning and Building Inspection Department \$1,857.14 per residential unit for a total not to exceed \$2,600,000 for Air Quality mitigation. The \$2,600,000 will be distributed by the Air District as follows: \$1,565,806 for funding agricultural pump retrofits and \$1,034,194 for purchase of school buses. (Public Works).”* The condition was a mitigation measure to address project-related temporary air emissions of Reactive Organic Gases (ROG) and Nitrogen Oxides (NO<sub>x</sub>) in excess of MBARD thresholds (MBARD then being known as the Monterey Bay Unified Air Pollution Control District (MBUAPCD)).
- D. On September 18, 2018, the County received correspondence from Richard A. Stedman, Air Pollution Control Officer for MBARD, requesting to modify COA No. 184 to allow better allocation of funds for the benefit of air quality in the region and local area. In consultation with MBARD staff, an amendment to COA No. 184 is proposed which

would allow flexibility in funding allocation while maintaining the intended focus of reducing project-related emissions of ROG and NO<sub>x</sub>. The amendment of COA No. 184 is proposed to be in the substantially the following form: *“The applicant shall pay to the County the sum of \$1,857.14 per residential unit, for a total amount not to exceed \$2,600,000, for Air Quality mitigation. The funds will be distributed by the County to the Monterey Bay Air Resources District (District) to use toward emission reduction grant programs including, but not limited to, the installation of electric vehicle charging infrastructure, incentive programs promoting the purchase of electric vehicles (including school buses), and grant projects following the District’s Policies and Procedures Manual for the Carl Moyer Program. (Public Works).”* The compliance monitoring action, party responsible for compliance, and timing of compliance would not change from the existing wording of the condition.

- E. The amendment would serve the same purpose as the original COA No. 184 but would allow MBARD to allocate funds in the best manner possible to achieve the purposes of Air Quality mitigation. COA No. 184 explicitly limited the allocation of funds to agricultural pump retrofits and the purchase of school buses, which no longer provide the air quality benefit they once did. Because the degree of language specificity of the existing condition does not allow allocation of funding to other projects that would result in an increased reduction of ROG and NO<sub>x</sub> emissions in the area, MBARD requests modification of COA 184 to allow funding to be used toward emission reduction programs, including matching funds for the Carl Moyer Program.
- F. Amendment of COA No. 184 requires a discretionary action by the County Board of Supervisors, following consideration of the amendment at a noticed public hearing.
- G. While County is not aware of a threat of litigation over the proposed amendment, a discretionary action inherently raises the possibility of an action, claim or proceeding challenging the action, and the County typically requires the applicant to defend, indemnify and hold the County harmless against any such challenges.
- H. Currently, UCP East Garrison, LLC is the owner of East Garrison project site, except for those lots which have already been sold to other private owners, and responsible under the Combined Development Permit for compliance with Condition No. 184.
- I. UCP East Garrison, LLC does not object to the proposed amendment to Condition No. 184 and is technically the applicant for the amendment because they hold the permit; however, they are not willing to assume a defense and indemnity obligation to the County because MBARD, not UCP East Garrison, LLC, is the entity requesting the amendment.
- J. MBARD is willing to defend, indemnify and hold the County harmless in consideration for County approval of the amendment.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. The County shall consider amending Condition No. 184 of the Combined Development Permit in the same or substantially the same form as described in the recitals above.
2. If the County approves said amendment to Condition No. 184, MBARD hereby agrees to defend, indemnify, and hold harmless the County of Monterey, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, and employees to attack, set aside, void or annul the approval of the amendment. MBARD will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. The County shall promptly notify MBARD of any such claim, action, or proceeding, and the County shall cooperate fully in the defense thereof. The County may, at its sole discretion, participate in the defense of such action, but such participation shall not relieve MBARD of its obligations under this Agreement.
3. This Agreement shall bind the County and MBARD and their successors and assigns.
4. This Agreement may be amended only by a written instrument signed by both Parties.
5. This Agreement shall take effect upon the date the County or MBARD approves this Agreement, whichever is later (hereafter "Effective Date").
6. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the Parties as of the Effective Date.
7. Any individual executing this Agreement on behalf of the County or MBARD represents and warrants that they have the requisite authority to enter into this Agreement on behalf of such party and to bind said party to the terms and conditions of this Agreement.
8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the County and MBARD have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

MONTEREY BAY AIR RESOURCES DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to form and legality:

COUNTY COUNSEL

COUNSEL FOR MBARD

By: \_\_\_\_\_

By: \_\_\_\_\_