

Attachment 1

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**MEMORANDUM OF UNDERSTANDING
FOR THE DESIGNATION OF LEAD AGENCY BY AND AMONG
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY,
THE CITY OF MARINA,
THE CITY OF SEASIDE,
THE COUNTY OF MONTEREY,
THE CITY OF MONTEREY,
THE CITY OF DEL REY OAKS**

THIS AGREEMENT FOR THE DESIGNATION OF LEAD AGENCY, made and entered into as of _____, 2017, by and among the Transportation Agency for Monterey County (“TAMC”), the City of Marina (“Marina”), the City of Seaside (“Seaside”), the County of Monterey (“County”), the City of Monterey (“Monterey”), and the City of Del Rey Oaks (“Del Rey Oaks”), is made with reference to the following facts and circumstances:

RECITALS

WHEREAS, the former Fort Ord was decommissioned in 1994 and the Fort Ord Reuse Authority (the “Authority”) was created pursuant to California Government Code Section 67650 *et seq.* (the “Authority Act”) in order to facilitate the disposition, development and maintenance of former Fort Ord lands; and

WHEREAS, the Authority prepared and adopted a Base Reuse Plan (“BRP”) and reviewed and certified a Base Reuse Plan Environmental Impact Report (“BRP EIR”) in 1996; and

WHEREAS, included within the BRP was the concept of developing trails and connections between and through open space and habitat lands in order to foster recreation and educational activities related to the qualities of much of the land of the former Fort Ord; and

WHEREAS, a proposal to create a regional active transportation route to serve as a safe pedestrian and bicycle corridor connecting Seaside, Marina, Del Rey Oaks, Monterey and unincorporated areas within and adjacent to former Fort Ord lands, currently known as the Fort Ord Regional Trail and Greenway (FORTAG) Paved Transportation Corridor, as shown on the concept map attached hereto as **Exhibit A**, (the “FORTAG Project”) has been put forward by members of the community; and

WHEREAS, the FORTAG Project, if approved, would affect, and be carried out or approved by, several land use jurisdictions, including the parties hereto; and

WHEREAS, the FORTAG Project would likely involve the dedication of land, the issuance of permits, the development of paved surfaces, the possible disturbance of habitat lands, and actions associated with the continued maintenance of such infrastructure, thus requiring environmental review; and

WHEREAS, the California Environmental Quality Act (“CEQA”) provides that where a proposed project is to be carried out or approved by more than one public agency, an agency is to be determined to be the Lead Agency under CEQA, and such Lead Agency is to be responsible for preparing the appropriate environmental documentation; and

WHEREAS, Section 15051(d) of CEQA Guidelines (14 CCR § 15051) also provides that where more than one public agency meets the criteria for being a Lead Agency, the public agencies may designate a Lead Agency by agreement; and

WHEREAS, TAMC is a regional transportation planning agency, whose purpose includes the development of a multimodal transportation system that enhances mobility, safety, access, environmental quality, and economic activities in Monterey County; and

WHEREAS, the FORTAG Project was identified in TAMC’s Transportation Safety and Investment Plan as a potential regional project for pedestrian and bicycle safety in Measure X, approved by the voters in November, 2016.

NOW, THEREFORE, TAMC, Marina, Seaside, County, Monterey and Del Rey Oaks, (collectively the “Parties”) hereby agree as follows:

AGREEMENT

1. **RECITALS.** The Recitals set forth above are incorporated herein and constitute an integral part of this Agreement.

2. **DESIGNATION OF LEAD AGENCY.** The Parties agree that TAMC shall be designated as the Lead Agency for the purpose of environmental review of the FORTAG

Project, as preliminarily described herein. TAMC may employ one or more consultants to assist in TAMC's duties as Lead Agency. Further reference to TAMC in this Agreement shall include any of TAMC's officers, employees or consultants.

3. PRELIMINARY DESCRIPTION OF FORTAG PROJECT FOR PURPOSES OF PROJECT DESCRIPTION FOR ENVIRONMENTAL REVIEW:

- a. A continuous 12-foot wide paved bikeway with open space buffer on both sides in two general loops: a Northern Loop and a Southern Loop.
- b. The Northern Loop encircles Marina, following a 13-mile route that includes 3 miles of an existing Coastal Recreation Trail.
- c. The Southern Loop encircles Seaside and bisects Del Rey Oaks, following a 15-mile route that includes 4 miles of existing Coastal Recreation Trail.
- d. The entire FORTAG Project will include spurs connecting the routes with existing and planned bicycle and pedestrian infrastructure, and will provide links to unpaved trails.
- e. It is anticipated that the FORTAG Project, if approved, will be developed in a series of segments by and through a number of jurisdictions.

4. ANTICIPATED SCOPING OF ISSUES. The Parties shall cooperate with each other and especially with TAMC as Lead Agency, to participate in scoping activities and other activities and review necessary to the preparation of appropriate environmental review as determined by TAMC.

5. DESIGNATION OF ANTICIPATED RESPONSIBLE AGENCIES. The cities of Del Rey Oaks, Marina, Monterey, Seaside, and the County of Monterey are hereby designated as "Responsible Agencies" under CEQA for the purposes of the FORTAG Project, as conceptually described herein. As such, each of these designated entities shall actively participate in the environmental review process undertaken by TAMC, including the review and provision of comments, and shall otherwise follow the requirements of Responsible Agencies, provided, however, that the designation made herein shall not require an agency to be a Responsible Agency, nor forbid an agency from being a Responsible Agency, if the information generated by environmental review indicates otherwise.

6. FISCAL RESPONSIBILITY OF THE PARTIES. TAMC, as Lead Agency, shall be responsible for the costs of conducting the environmental review of the FORTAG

Project, up to and including possible approval of the environmental document, and litigation (if any) related to such approval. Each Responsible Agency shall be responsible for its own actions, including costs related to the active participation in the environmental review process, and any actions that may be taken by a Responsible Agency subsequent to possible approval of the environmental document by TAMC.

7. COOPERATION BY PARTIES/BEST EFFORTS. Each Party shall use its best efforts to cooperate with each other, and to work with third parties, to eliminate obstacles to the timely environmental review and consideration of the FORTAG Project. The Parties shall designate appropriate staff to confer, as needed, to facilitate environmental review.

8. NO PROMISE OR REPRESENTATION OF APPROVAL. It is expressly agreed and understood that by entering into this Agreement no Party is making any promise, representation or commitment to give special treatment to, or exercise its discretion favorably with respect to the final consideration and possible approval of the FORTAG Project.

9. INTERPRETATION OF THIS NEGOTIATED AGREEMENT. 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.

10. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. Each party hereto shall act in good faith to expeditiously carry out each party's respective obligations under this Agreement.

11. AMENDMENTS OR MODIFICATIONS. No amendment to, or modification of, this Agreement shall be valid or enforceable unless set forth in writing and signed by each of the Parties hereto.

12. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the

Parties and supersedes all prior agreements, negotiations or representations with respect to designation of the Lead Agency for the Project which are not expressly set forth herein.

14. DISPUTE RESOLUTION. The purpose of this Agreement is to designate TAMC as Lead Agency for purposes of environmental review of the FORTAG Project. The parties agree to follow the California Environmental Quality Act and its regulations relative to any disputes concerning the substance or process of environmental review conducted by TAMC as Lead Agency.

15. GOVERNING LAW & VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. EXHIBITS. All exhibits and addenda referred to in this Agreement are attached hereto and incorporated herein by reference.

17. SEVERABILITY CLAUSE. If any provision, or any portion thereof, contained in the Agreement is held unconstitutional, invalid, unenforceable, or contrary to public policy, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

18. EFFECTIVE DATE. This Agreement shall take effect only upon execution by all of the parties hereto.

IN WITNESS WHEREOF, each Party hereto has executed this Agreement on the date set forth opposite their respective signatures. Each person signing represents that he or she holds full authority to enter this Agreement, and by signing intends to bind their principal to the terms hereof.

[signatures on following pages]

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

CITY OF MARINA

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

CITY OF SEASIDE

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

COUNTY OF MONTEREY

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

CITY OF MONTEREY

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

CITY OF DEL REY OAKS

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____

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