

Attachment B

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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: _____
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: _____
Date: _____

Approved as to form:

City Attorney

CITY OF MARINA

By: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

CITY OF MONTEREY

By: _____
Its: _____
Date: _____

Approved as to form:

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

MONTEREY PENINSULA REGIONAL PARK DISTRICT

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	Title 440 Harcourt Ave. Seaside, CA 93955 (831) Email address
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

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