

**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 Seaside (“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 February 9, 2021.
- 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 Del Rey Oaks 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, including those 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.

6. Prior to the completion of construction of the CDR Segment of FORTAG, adopt and enforce such reasonable use and operations rules and regulations as City deems necessary and appropriate to accomplish the Supplemental MMRP attached as Exhibit 2.
7. Provide a minimum of 90 days advanced notice to TAMC, and conduct a duly noticed public hearing, prior to any effort to modify the use and operations rules and regulations adopted pursuant to Section V., paragraph 6, above.

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 SEASIDE

By: _____

Its: _____

Date: _____

Approved as to form:

City Counsel

EXHIBIT 1
MAP OF SEGMENT ONE ALIGNMENT

EXHIBIT 2
SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM