

REGIONAL FUNDING AGREEMENT
between the
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
CITY OF CARMEL-BY-THE-SEA

PEDESTRIAN AND BICYCLE WAYFINDING PROGRAM

This Regional Funding Agreement for Pedestrian and Bicycle Wayfinding Program ("Agreement") is effective the _____ of _____, 2021, and is entered into by and between the Transportation Agency for Monterey County ("TAMC") and the City of Carmel-by-the-Sea ("RECIPIENT").

RECITALS

1. On May 25, 2016, the TAMC Board of Directors adopted the Regional Pedestrian and Bicyclist Wayfinding Plan for Monterey County ("Wayfinding Plan") and authorized the submission of grant applications to implement the Wayfinding Plan.
2. The Wayfinding Plan was determined to be exempt from CEQA under 14 CCR Section 15301: Existing Facilities, as affecting minor alterations to existing public structures and facilities. All applicable statutes of limitations concerning the approval of the Wayfinding Plan under CEQA have been exhausted.
3. TAMC has been awarded Local Transportation Funds and State SB1 Local Partnership Program funds in the amount of One Million Nine Hundred Thirty-one Thousand Dollars (\$1,931,000) for the development and implementation of the Wayfinding Plan within TAMC's jurisdictional boundaries.
4. RECIPIENT desires to improve bicycle and pedestrian safety within its jurisdiction, and concurrent with this Agreement, has also determined that TAMC's Regional Pedestrian and Bicyclist Wayfinding Plan is one means to achieve that desire.
5. This Agreement delineates the obligations of the Parties to this Agreement with respect to the implementation of the Regional Pedestrian and Bicyclist Wayfinding Plan, adopted by the TAMC Board, within the jurisdiction of RECIPIENT.

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows:

Article I: Covenants of Recipient

1.1. Project Description. The complete Project Description is specified in Exhibit “A” and incorporated herein by this reference. The Project consists of the acceptance of Wayfinding signage, the identification of appropriate locations for Wayfinding signage and the installation and maintenance of such signage.

1.2. Change In Project Scope. No change in the Project scope as described in Exhibit A may be approved or implemented until it has been reviewed and approved in writing by an amendment to this Agreement approved by the TAMC Board of Directors.

1.3. Eligible Costs. Eligible costs to be funded by TAMC pursuant to this Agreement are those related to the solicitation and award of one or more contract by TAMC for the manufacture and installation of Wayfinding signage approved by RECIPIENT, as set forth below. RECIPIENT shall bear all costs related to Recipient’s actions related to this Agreement, including the issuance of permits, and the maintenance and repair of Wayfinding signage within its jurisdiction.

1.4. Acceptance of Signage. RECIPIENT hereby accepts the designs relative to the Wayfinding “Sign Topper” portion of the signage as shown in Exhibit “B,” and incorporated herein by this reference. RECIPIENT shall allow the placement of at least 15 and up to 20 signs within its jurisdiction, generally at the locations designated in Exhibit “C,” and incorporated herein by this reference. RECIPIENT agrees to work diligently and in good faith to provide and issue necessary permits for such signage at or near the designated locations, as physical conditions permit.

1.6. Timing of Installation. RECIPIENT shall permit and allow the installation of at least 15 signs within the first six (6) months after notification by TAMC.

1.7. Maintenance and Repair. RECIPIENT shall, at its cost, maintain the installed signage in good repair and visibility throughout the period of this Agreement.

1.8. Status Reports. RECIPIENT shall provide written reports on the status of the installed signage, starting no later than the first year anniversary of the effective date of this Agreement, and continuing in three-year increments throughout the period of this Agreement.

Article II: Covenants of TAMC

2.1. TAMC shall develop, award and fund one or more contracts for the fabrication and installation of Wayfinding Signage in generally the following manner:

2.1.1. A customized “Sign Topper” portion approved by RECIPIENT that incorporates agreed upon logos and color scheme that helps to establish a regional wayfinding brand. A rendering of the Jurisdictional Sign Topper selected by RECIPIENT is shown as Exhibit B.

2.1.2. Installation of Wayfinding Signage, suitable to the location and manner of installation of such Wayfinding signage. Such installation may be by new post(s) or pole(s), or installation on an existing structure.

2.1.3. In addition, a standardized “confirmation” portion shared by all Wayfinding signage pursuant to the TAMC Pedestrian and Bicyclist Wayfinding Plan that indicates travelers are on a designated regional route. A rendering of the Confirmation signage is shown as Exhibit B.

2.2. In entering into a contract for the fabrication and installation of Wayfinding Signage for RECIPIENT, TAMC shall call for the fabrication of one and one-half (1.5) times the number of Jurisdictional Sign Toppers. The additional Jurisdictional Sign Toppers above the number to be installed pursuant to this Agreement shall be directed to be delivered to RECIPIENT for use in RECIPIENT’s maintenance responsibilities.

Article III: **Mutual Covenants**

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.15.

3.2. Discharge/Termination. This Agreement shall be subject to discharge as follows:

3.2.1. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the Parties. At the time of any such mutual termination, TAMC shall receive or retain any Jurisdictional Sign Toppers and standardized Directional signs which may be the subject of an executed contract as described in Section 2.1, but not yet installed.

3.2.2. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.14, this Agreement shall be discharged, and the Parties shall have no further obligation to each other, upon completion of the Project, which shall continue for a ten (10) year period after installation of the last Wayfinding Sign pursuant to this Agreement.

3.3. Mutual Indemnity.

3.3.1 RECIPIENT Indemnity Requirements. It is mutually understood and agreed that RECIPIENT shall, to the full extent permitted by law, fully defend, indemnify and hold harmless TAMC, its Board and Directors, and any officer, agent, or employee of TAMC, against any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, RECIPIENT shall fully defend, indemnify and hold TAMC, its Board and Directors, its officers, agency and employees, harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by RECIPIENT under this Agreement or in connection with any work, authority, or jurisdiction delegated to RECIPIENT or funded by RECIPIENT under this Agreement.

3.3.2 TAMC Indemnity Requirements. It is mutually understood and agreed that TAMC shall, to the full extent permitted by law, fully defend, indemnify and hold harmless RECIPIENT, its elected officials, and any officer, agent, or employee of RECIPIENT, against any damage or liability occurring by reason of anything done or omitted to be done by TAMC under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, TAMC shall fully defend, indemnify and hold RECIPIENT, its elected officials, its officers, agency and employees, harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by TAMC under this Agreement or in connection with any work, authority, or jurisdiction delegated to TAMC or funded by TAMC under this Agreement.

3.4. Liability. As TAMC is only acting with the approval of RECIPIENT with respect to the design, designated location and installation of Wayfinding signage herein identified, TAMC is not liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of the acts or omissions solely caused by RECIPIENT or its agents, contractors, consultants, engineers, or representatives. Nor shall TAMC be liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of TAMC's provision of funds or materials which may be utilized in, but not limited to the acquisition of, the design, implementation, or construction of the Project herein described.

3.5. Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal or electronic (delivery receipt enabled) service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

TAMC

Debra L. Hale
Executive Director
55B Plaza Circle

RECIPIENT

Robert M. Harary, P.E.
Director of Public Works
P.O. Box CC

Salinas, California 93901
debbie@tamcmonterey.org

Carmel, CA 93921
rharary@ci.carmel.ca.us

Either Party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.5. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.6. Additional Acts and Documents. Each Party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of the Agreement.

3.7. Integration. This Agreement, together with the Pedestrian and Bicyclist Wayfinding Plan, represents the entire Agreement of the Parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by any of the Parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.8. Amendment. This Agreement may not be changed, modified, or rescinded except in writing, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.9. Independent Agency. RECIPIENT renders its services under this Agreement as an independent agency and TAMC is also an independent agency under the Agreement. None of the RECIPIENT's agents or employees shall be agents or employees of TAMC and none of TAMC's agents or employees shall be agents or employees of RECIPIENT.

3.10. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any Party without the express written consent of the other Party.

3.11. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of TAMC or RECIPIENT, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.12. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either Party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the Parties.

3.13. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by the Parties; each counterpart shall be deemed an original, but all counterparts shall constitute a single document.

3.14. Survival. The following provisions in this Agreement shall survive discharge:

As to both Parties, the following section shall survive discharge: Section 3.3. (indemnity) and Section 3.4 (Liability), until the expiration of all relevant statutes of limitations.

3.15. Time. Time is and shall be of the essence of this Agreement and each of its provisions in which performance is a factor.

3.16. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.17. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

3.18. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.19. No Continuing Waiver. The waiver by any Party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.20. No Rights in Third-Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies on any third-party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party to any Party to this Agreement, nor shall any provision of this Agreement give any third-party any right of subrogation or action over or against any Party to this Agreement.

3.21. Signatory's Warranty. Each Party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other Party.

3.22. List of Exhibits. This Agreement contains the following Exhibits:

Exhibit A: Project Description

Exhibit B: Wayfinding Sign Designs
Exhibit C: General Locations of Wayfinding Signs

**** SIGNATURES ON THE NEXT PAGE ****

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

RECIPIENT:

TRANSPORTATION AGENCY FOR
MONTEREY COUNTY:

By: _____
Chip Rerig
City Administrator

By: _____
Debra L. Hale
Executive Director

APPROVED AS TO FORM:

By: _____
Brian A. Pierik
City Attorney

By: _____
Katherine A. Hansen
TAMC Counsel

EXHIBIT A

PROJECT DESCRIPTION

Installation and maintenance of signs at the locations generally described in Exhibit C, in order to encourage and facilitate active transportation to and around locations in Monterey County, with an emphasis on the City of Carmel-by-the-Sea.

EXHIBIT B

WAYFINDING SIGN DESIGN ACCEPTED BY RECIPIENT

1. CUSTOMIZED SIGN TOPPERS (to be used in conjunction with confirmation and direction signs)
(Jurisdiction to select either Full Color or Two Color sign topper)



Full Color



Two Color

2. CONFIRMATION SIGNS



3. DIRECTION SIGNS



EXHIBIT C

GENERAL LOCATION OF WAYFINDING SIGNS



