

# Attachment A

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## JOINT COMMUNITY FACILITIES AGREEMENT

This Joint Community Facilities Agreement (this “**Agreement**”) is made by and between the Fort Ord Reuse Authority (“**FORA**”) and the County of Monterey, California (the “**Participating Agency**”) with reference to the following facts and objectives.

**A.** In 2002, FORA established the Fort Ord Reuse Authority Basewide Community Facilities District (the “**CFD**”), pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 *et seq.*), as amended (the “**Act**”) for the purpose of collecting special taxes under the Act to finance, among other things, the construction of certain roadway improvements, transit improvements, water and storm drain improvements, other public facilities, and for costs related to habitat management within the CFD or otherwise incident to or required by reason of the development of property within or adjacent to the CFD, all as more particularly described in that Notice of Special Tax Lien recorded on May 22, 2002 as Document No. 2002048932 in the office of the County Recorder of the County of Monterey, California. FORA subsequently earmarked a portion of the special taxes so collected to finance the services described in Exhibit A attached hereto and incorporated herein by this reference (the “**Habitat-Related Services**”), resulting in accumulated funds having an approximate aggregate current unexpended balance of \$17,000,000 (the “**Habitat Funds**”).

**B.** FORA is scheduled to terminate on June 30, 2020 (“**FORA’s Termination Date**”) in accordance with the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*), as amended. This Agreement is necessary to provide for the orderly transition of governmental finances in connection with the termination of FORA. Prior to FORA’s Termination Date, FORA plans to allocate, divide, and distribute to each of the Participating Agency and certain other public entities having habitat management responsibilities within the former Fort Ord and which enter into a joint community facilities agreement with FORA a portion of the then unexpended Habitat Funds in accordance with the formula set forth in Exhibit B attached hereto and incorporated herein by this reference. The Participating Agency’s allocated portion of such unexpended Habitat Funds may be referred to herein as the “**Allocated Funds.**”

**C.** The parties hereto expect that the Participating Agency will provide Habitat-Related Services, particularly those that pertain to real property within the Participating Agency’s territorial limits (the “**Covered Services**”). The parties acknowledge that such real property within the unincorporated area of the County may include real property under the authority and control of another public entity, such as, for example, real property under the jurisdiction of a public educational institution. The term “Covered Services” includes Habitat Related Services that pertain to such property.

**D.** FORA and the Participating Agency now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the use of that portion of the Habitat Funds allocated to the Participating Agency for its use in connection with the provision of the Covered Services, all as more particularly set forth below.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual terms, covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Delivery and Segregation of Allocated Funds.** Prior to FORA's Termination Date, FORA shall deliver the Allocated Funds to the Participating Agency. The Allocated Funds, together with any earnings thereon, shall be held by the Participating Agency in an account separate and apart from any other account maintained by the Participating Agency (the "**Allocated Funds Account**"). Funds in the Allocated Funds Account shall be used exclusively for payment of the costs of the Covered Services. The Participating Agency may elect to transfer a portion of the Allocated Funds to another public entity having habitat management responsibilities within the former Fort Ord ("**Transferee Public Entity**"), provided that the Participating Agency and Transferee Public Entity enter into a written agreement requiring the Transferee Public Entity to use the Allocated Funds only for Habitat Related Services and to hold the Allocated Funds in an account separate and apart from the any other account maintained by the Transferee Public Entity. Other than by providing the Allocated Funds, FORA shall have no obligation to pay for any of the costs of the Covered Services. It will be the responsibility of the Participating Agency, in the exercise of its discretion, to address, pay, arrange for the payment or equivalent or reduce, any costs of the Covered Services in excess of the funds available in the Allocated Funds Account.

**Section 2. Habitat Management.** Following FORA's Termination Date, the Participating Agency shall be solely responsible for carrying out any habitat management or other similar requirements associated with the Covered Services.

**Section 3. Limited Obligations.** All obligations of FORA under and pursuant to this Agreement shall be limited to the amounts it provides for deposit into the Allocated Funds Account. No member of FORA's board of directors or any officer, employee, representative, or agent of FORA shall in any event be personally liable hereunder.

**Section 4. Term.** The term of this Agreement shall begin on the full signing of this Agreement by the parties and continue until FORA's Termination Date; provided, however, that the Participating Agency's obligations hereunder shall remain in full force and effect until the exhaustion of all amounts in the Allocated Funds Account by proper expenditure thereof by the Participating Agency to pay the costs of the Covered Services. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

**Section 5. Agreement of Public Benefit.** By their respective approvals of this Agreement, FORA and the Participating Agency have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Covered Services in furtherance of the purposes of the Act.

**Section 6. Partial Invalidity.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**Section 7. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto

**Section 8. Third-Party Beneficiaries.** In order to provide a mechanism for enforcement of the Participating Agency's accounting obligations under this Agreement after FORA's Termination Date, the Cities of Del Rey Oaks, Marina, Monterey and Seaside are each hereby made an intended third-party beneficiary of this Agreement.

**Section 9. Amendment.** This Agreement may be amended at any time but only in writing signed by each party hereto.

**Section 10. Cooperation.** Each of the parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Agreement.

**Section 11. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement.

**Section 12. Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

**Section 13. Interpretation.** This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**Section 14. Execution in Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original. Faxed, photocopied or e-mailed signatures shall be deemed originals for all purposes. This Agreement shall be effective as to each party when that party has executed and delivered a counterpart hereof.

**Section 15. Authority.** Each party represents and warrants to the other that it is authorized to execute, deliver and perform this Agreement, and the terms and conditions hereof are valid and binding obligations of the party making this representation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written beneath their respective signatures below.

**FORT ORD REUSE AUTHORITY**

**COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Josh Metz,  
Executive Officer

By: \_\_\_\_\_  
Chris Lopez, Chair  
Monterey County Board of Supervisors

Dated: \_\_\_\_\_, 2020

Dated: \_\_\_\_\_, 2020

ATTEST:

ATTEST:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jon Giffen,  
Authority Counsel

\_\_\_\_\_  
Wendy Strimling,  
Assistant County Counsel

## EXHIBIT A

### DESCRIPTION OF THE HABITAT-RELATED SERVICES

Habitat-Related Services consist of “Habitat Management” within or in the vicinity of the CFD, or otherwise incident to or required by reason of development of the property within and adjacent to the CFD.

In accordance with the Notice of Special Tax Lien referenced in Recital A of this Agreement, “Habitat Management” includes expenditures for, without limitation, all of the following but only as they relate to managing the habitat within the CFD boundaries: all work and activities to study, review environmental impacts and mitigation measures, planning and design, and all work to construct and install the improvements, including (as applicable) but not limited to, acquisition of right of way and land, soils testing, mobilization, permits, plan check and inspection fees, legal and overhead costs, clearing, grubbing, coordination and supervision costs, tree removal, environmental mitigation actions, grading, protective fencing and erosion control, trenching (including shoring and backfill), base and finish paving and pavement restoration, curbs, gutters and sidewalks, signage, and striping, signalization, landscaping and irrigation, lighting, relocation of existing facilities and improvements which are in existence and are to be retained in a different location, and related appurtenances. “Habitat Management” also includes administrative fees and expenses, and any other costs described in Section 53317(e) of the Mello-Roos Act and not specifically listed above.

**EXHIBIT B**

FORMULA FOR ALLOCATION OF UNEXPENDED HABITAT FUNDS

County of Monterey	79.9%
City of Marina	7.9%
City of Seaside	7.4%
City of Del Rey Oaks	4.5%
City of Monterey	<u>0.3%</u>
TOTAL	100%