

Attachment B

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Monterey County

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Fort Ord Committee

Legistar File Number: TMP 19-020

December 12, 2019

Introduced: 12/11/2019

Current Status: Agenda Ready

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Matter Type: General Agenda Item

- a. Discuss issues of concern for the County related to the Fort Ord Reuse Authority's dissolution on June 30, 2020;
- b. Support that the Board of Supervisors authorize appropriating up to \$100,000 one-time funds in the CAO Inter-Governmental and Legislative Affairs budget to be used for outside consultants and specialized services related to FORA transition; and
- c. Provide direction to staff for recommendation(s) to the Board of Supervisors.

RECOMMENDATION:

It is recommended that the Fort Ord Committee:

- a. Discuss issues of concern for the County related to the Fort Ord Reuse Authority's dissolution on June 30, 2020;
- b. Support that the Board of Supervisors authorize appropriating up to \$100,000 one-time funds in the CAO Inter-Governmental and Legislative Affairs budget to be used for outside consultants and specialized services related to FORA transition; and
- c. Provide direction to staff for recommendation(s) to the Board of Supervisors.

SUMMARY:

Staff continues to identify and analyze key issues related to FORA's dissolution on June 30, 2020. Key issues include: FORA bond for building removal; habitat management/conservation plans (HMP/HCP); Environmental Services Cooperative Agreement (ESCA); Land Use Controls (LUC) annual reporting; Pollution Legal Liability (PLL) first-named insured; and FORA Community Facilities District (CFD) replacement. Other issues that staff is evaluating potential impact to the County, depending on their outcome, include transportation; water and wastewater; FORA pending litigation; administrative issues; CALPERS liability; and landfill border parcels.

Staff requests that the Fort Ord Committee consider issues related to FORA transition, provide direction to staff how and whether to bring forward various transition issues to the Board of Supervisors. Staff also recommends that the Board authorize up to \$100,000 funds to be used for outside consultants and specialized services, as needed, related to FORA transition. These would be one-time funds managed out of the CAO budget. Staff recommends using these funds to hire Carlos Urrutia Consulting, which offers significant expertise and knowledge of former Fort Ord, East Garrison, FORA issues and general financial policy to provide analysis and recommendations pertaining to various policy and financial matters. Mr. Urrutia has served as a Management Analyst providing critical support on other FORA matters so he is very well informed and would be able to hit the ground running. In addition, staff has identified the need to hire a third party with expertise in development fees and Community Facility District financing.

DISCUSSION:

At its September 12 and 23, 2019 meetings, the Fort Ord Committee received reports and discussed issues of concern for the County related to the Fort Ord Reuse Authority's (FORA) dissolution on June 30, 2020. Since that meeting staff has continued to evaluate the key issues related to FORA's dissolution and have obtained additional information regarding a number of key issues of concern to be discussed with the Committee, and if recommended by the Committee, with the full Board of Supervisors. Solutions for some of these issues involve agreements with other jurisdictions or entities, and County staff is actively working toward getting agreements in place where needed. However, the County cannot assume agreements will be reached prior to June 30, 2020 and also needs to plan for the County's needs upon dissolution where agreement may not be needed or achieved.

At its December 13, 2019 Board meeting, the Fort Ord Reuse Authority (FORA) will receive a report regarding the proposed Transition Plan Implementing Agreements (TPIAs) and the Habitat Conservation Plan (HCP) Joint Powers Authority (JPA) formation (Attachment A - 12/13 FORA Board Item 8b). Given the tight timeline for identifying and resolving issues associated with FORA's June 30, 2020 dissolution, staff has identified the need to bring on outside expertise on a number of issues. It is further anticipated that outside expertise beyond what staff has already identified may be needed to adequately analyze FORA transition issues and ensure County interests are protected throughout the transition. Staff recommends allocating \$100,000 in the CAO IGLA budget for these services.

Below is a status update and key issues identified by staff for consideration by the Committee. These issues require thought for what agency takes lead for the long-term implementation.

FORA Bond for Building Removal

FORA staff has indicated that they are preparing the bond legal documents and a resolution for the FORA Board to consider at its December 13, 2019 meeting to authorize a bond for building removal and to begin the 60-day validation period. Unanswered questions remain regarding FORA's authority to utilize tax increment to repay the bonds and Department of Finance's position. FORA staff has indicated that the proposed action on December 13 will not commit the FORA Board to selling bonds at this time. City of Marina staff and council representatives has indicated it is willing to be the successor entity to administer the bond, and the City of Seaside staff has expressed willingness to do so if for any reason City of Marina does not become successor. Next steps for the County would include advocating for/reviewing an implementation agreement among the jurisdictions who would receive the bond proceeds to address issues of distribution of proceeds, performance milestones, dispute resolution, liability for waste generation, etc. The already retained outside bond counsel, outside financial consultant, County staff and County Counsel can staff this matter.

Habitat Management / Conservation Plan

Staff is conducting review of the draft Fort Ord Multispecies Habitat Conservation Plan (HCP) and the associated Draft Environmental Impact Report (EIR) / Environmental Impact Statement (EIS) on the HCP. Comments are due December 16, 2019, and staff intends to submit public comment. The policy question remains whether the County supports the HCP regional approach; however, additional information is needed. Of particular concern is funding for the HCP, and staff are meeting with FORA

and their financial consultants on Wednesday, December 11, 2019 on this matter. There is also the question of governance and whether the County supports being a party to a Joint Powers Authority (JPA) to manage the obligations under the HCP, and if the proposed structure of the JPA (number of votes per member, etc.) is acceptable to the County. If County supports formation of a joint powers agency, does the County want to advocate entry into JPA before FORA dissolves, even if HCP is not yet approved? Given the short timeframe, staff would advocate for bringing on outside resources to assist with analysis of the HCP and its financial structure. Additionally, the County should consider whether to advocate for a particular method of distribution of the \$15.9 million FORA has set aside for the endowment for the HCP if a JPA is not in place or HCP adopted prior to FORA's dissolution.

Environmental Services Cooperative Agreement (ESCA)

The City of Seaside continues to take actions and work through issues of concern to become the ESCA successor, pending approval from the US Army. It was last communicated to staff that Seaside anticipates knowing within the first quarter of the 2020 if it will become the successor agency for ESCA. FORA staff indicated that they would be meeting with the Army in November to address ESCA. An agreement is to be presented to each of the jurisdictions indicating that the jurisdictions recognize Seaside as the ESCA successor; however, a draft agreement has not been provided to date. Staff continues to monitor progress, but contingency planning to potentially assume this responsibility if for any reason Seaside does not become the successor is challenging, as we may not receive final word until after the County Fiscal Year 2020-2021 budget deadlines have passed.

Land Use Controls (LUC) Annual Reporting

County staff has been working with the FORA ESCA team to transition Land Use Control (LUC) annual reporting to the California Department of Toxic Substances Control (DTSC), as County had previously agreed to assume this responsibility. (Memorandum of Agreement among FORA, Monterey County, and Cities of Seaside, Monterey, Del Rey Oaks and Marina, CSUMB, UCSC, MPC, and)DTSC, effective Nov. 15, 2007.) The MOA provides that, after the responsibility shifts from FORA to County, County would be liable for DTSC's annual costs to review and oversee compliance, and the parties to the MOA would share these DTSC's costs as well as County's administrative costs incurred in performing the annual reporting; however, no mechanism has been put in place to ensure the County receives funding from the affected jurisdictions to perform this function. While it had been contemplated that the County would assume this role, FORA's attorney has suggested that this obligation should go to the entity who becomes the ESCA successor. County needs to determine if it wishes to retain this role, and if so, should ensure that as part of the FORA transition, the parties to the MOA agree to this sharing of the costs.

Pollution Legal Liability (PLL) Insurance: FORA and several jurisdictions, including the County, are covered under an insurance policy through 2024 to address risks associated with unexploded ordinance. The County Board of Supervisors has previously adopted a resolution expressing willingness to become "first named insured" at the point of FORA dissolution, subject to figuring out the administrative costs, but FORA's attorney has advised that the entity who assumes the ESCA obligation should become the first named insured. This issue needs to be resolved, as part of the ESCA successor issue. If County is to assume the role of first named insured, County should address whether the proposed funding from FORA is adequate. The Transition Plan adopted by the FORA

Board in December 2018 states that FORA is holding \$287,000 in an account for self-insured retention for this policy, and that the first named insured would receive this amount. This amount is less than the SIR, \$500,000, under the policy; however, no claims have been made to date under the policy.

Replacement of FORA CFD fee for East Garrison development

County has met with the East Garrison developer to discuss various FORA transition issues, including establishing a replacement for the FORA CFD. As next step, County needs to procure outside expertise to assist in developing a proposal for a replacement development impact fee or other fee to replace the CFD fee for the remainder of the East Garrison development.

Below is a status update and other issues identified by staff for consideration by the Committee. These issues require monitoring to assess how the County could be impacted, including what resources/actions may be needed.

Transportation

The key transportation project within the former Fort Ord that is directly impacted by FORA's dissolution is the Reservation Road widening and Davis Road intersection project. With FORA's dissolution and cessation of the FORA CFD, the County is looking at an approximately \$11.8 million shortfall that was included in the FORA Capital Improvement Plan but will not be incurred until after June 30, 2020. County needs to identify replacement funding mechanism for this project.

Water and Wastewater

A proposed Ord Community Water and Wastewater Services Agreement with each of the land holding jurisdictions within the former Fort Ord is being developed by the Marina Coast Water District (MCWD). Representatives from the County and Monterey County Water Resources Agency met with MCWD representatives in the late summer 2019 to discuss a previous draft of the agreement and provided preliminary feedback to MCWD. An updated draft Water TPIA is available (Attachment B), and staff is in the process of reviewing that draft and scheduling a meeting with MCWD to discuss issues and concerns.

FORA Pending Litigation

As part of FORA dissolution, FORA needs to determine who will take over management of any pending litigation against FORA, and how such litigation will be funded. County may want to advocate for a position on this issue.

Administrative Issues

Staff has taken steps to prepare to receive all FORA records for retention and management, as proposed in the draft multi-agency TPIA, should the County agree to accept this responsibility. FORA has been provided the County records retention policies and FORA staff have indicated that they have a dedicated resource working on records. FORA and County staff will meet in early 2020 on this issue. There may be other administrative responsibilities that may be needed or requested to transfer to the County from FORA such as furniture and equipment disposition etc... A key issue is whether any funds will transfer from FORA to County to cover these costs.

CALPERS liability:

At this time FORA anticipates having approximately \$7 million in trust that can only be used cover the CALPERS liability. While the final liability costs will not be known until after FORA dissolves, FORA is anticipating the CALPERS liability to be within the \$7 million range. The Transition Plan adopted by the FORA Board in December 2018 directed FORA to discharge this liability prior to dissolution. It is unclear if there will be any residual unfunded CALPERS liability and who would be responsible for funding it.

Landfill Border Parcels

On December 10, 2019 the Successor Agency to the Redevelopment Agency of the County of Monterey transferred to the County the two remaining parcels it owned on the former Fort Ord, with the exception of East Garrison parcels. These parcels are part of the landfill and landfill border parcels subject to negotiation for the transfer of certain properties with the City of Marina. Negotiations are complete with the City of Marina, and staff anticipates coming to the Board in January or February 2020 as a final step to transfer the parcels to the City of Marina.

OTHER AGENCY INVOLVEMENT:

FORA is legislatively scheduled to dissolve on June 30, 2020. Supervisors Parker and Phillips serve on the County Board of Supervisors' Fort Ord Committee; Supervisors Adams, Parker, and Phillips serve on the FORA Board; and Supervisor Phillips serves as Chair of the FORA Legislative Committee. RMA represents the County on the FORA Administrative Committee, which is considering the FORA transition issues. The County Administrative Office, the Office of County Counsel, and RMA are part of the County's FORA transition team.

FINANCING:

RMA staff time to evaluate FORA transition issues and prepare this report is funded as part of the FY 2019-20 Adopted Budget for the RMA, Fund 001, Appropriation Unit RMA013. An increase in appropriations by \$100,000, financed by an operating transfer from General Fund Contingencies, Fund 001, Appropriation Unit CAO020, to RMA, Fund 001, Appropriation Unit CAO004 is requested to provide readily available funding to secure outside consulting and other professional services as needed regarding FORA transition matters.

A contract for Carlo Urrutia would be set up as a not to exceed amount of \$3,000 per month through June 30, 2020, for a total agreement amount of not more than \$18,000. The person/firm and cost of a third party with expertise in development fees and Community Facility District financing is not known at this time. RMA will work with CAO-Budget to true-up actual expenditures at the end of FY 2019-2020 to ensure that any unexpended funds for outside consultants and experts are returned to General Fund Contingencies, Fund 001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Ensuring a smooth transition after FORA's dissolution supports the Board's 2015 Strategic Initiative for Economic Development by continuing to support and facilitate the redevelopment of the former Fort Ord area and economic recovery to the region for the base closure. It is also important that County prepare for potential impacts resulting from this transition.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Melanie Beretti, Property Administration / Special Programs Manager (x5285)

Approved by: Carl P. Holm, AICP, RMA Director

Attachments:

Attachment A - 12/13/19 FORA Board Item8b

Attachment B - 10/23/19 New Ord Community Water & Wastewater Services Agreement

Attachment A

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FORT ORD REUSE AUTHORITY BOARD REPORT

BUSINESS ITEM

Subject:	2018 Transition Plan and Draft Implementing Agreements Status Report	
Meeting Date:	December 13, 2019	INFORMATION/ACTION
Agenda Number:	8b	

RECOMMENDATION:

- i. Receive a Fort Ord Reuse Authority (“FORA”) Transition Plan Implementing Agreements (“TPIA”) Progress Report;
- ii. Receive a Habitat Conservation Plan (“HCP”) - Joint Powers Authority (“JPA”) Formation Progress Report

BACKGROUND:

At its March 22, 2019 meeting and (prior meetings) the FORA Board requested that staff and consultants provide periodic updates regarding the 2018 Transition Plan Implementation.

i. TPIA PROGRESS REPORT

FORA transition plan implementation consultants Regional Government Services (“RGS”) continue meeting with various stakeholders and drafting Transition Plan Implementation Agreements (“TPIA”). The RGS workplan involves drafting the following set of TPIA for consideration by the Board:

1. **Multi-agency TPIA:** addressing issues relevant to each FORA land use jurisdiction (Del Rey Oaks, Marina, Monterey, Monterey County, Seaside) as well as:
 - a. Transferring FORA’s regional transportation obligations and offsite transportation reimbursement agreements to the Transportation Agency for Monterey County (“TAMC”) and the holdover jurisdictions;
 - b. Economic Development Conveyance (“EDC”) Successor (property transfers);
 - c. Local Reuse Authority (“LRA”) Successor; and
2. **Water TPIA(s):** addressing transfer of certain FORA water supply/allocation rights (as may be noted in EDC agreement above) and obligations to Marina Coast Water District (“MCWD”).
3. **Environmental Services Cooperative Agreement (“ESCA”) TPIA:** regarding post-FORA successor and obligations under this contract with the US Army.

RGS consultants met with the Administrative Committee on March 20, April 3, June 5, June 19, July 3, July 31, August 14, September 4, October 2, October 16, October 30, and November 13, 2019 to provide updates on TPIA progress.

An updated draft Multi-Agency Implementing Agreement based on comments received by signatory agencies was reviewed by the Administrative Committee on November 13 and will be shared for review by the Board and public prior to the December 13 Board meeting (**Attachment A**). MCWD released individual final draft agreements to relevant agencies the week of October 28.

Working closely with FORA ESCA staff, RGS also facilitated the development of a document describing the status and expected transfers of remaining FORA parcels (**Attachment B**).

ii. **HCP – JPA FORMATION PROGRESS REPORT**

In addition to facilitating the completion of the TPIA listed above, RGS has been contracted to mediate the HCP-JPA formation process. A JPA is proposed to implement the HCP and receive/oversee incidental take permits. The HCP identifies certain duties and obligations that must be fulfilled to support the issuance of permits under the Federal Endangered Species Act (“ESA”) and California Endangered Species Act (“CESA”) to enable urban development, operations and management in habitat management areas, and other activities and projects on property owned or controlled by the land use jurisdictions at the former Fort Ord. These land use jurisdictions or “permittees” include the following entities:

County of Monterey	Regents of the University of California
City of Marina	Board of Trustees of the California State University
City of Seaside	Monterey Peninsula Community College District
City of Del Rey Oaks	Monterey Peninsula Regional Parks District
City of Monterey	Marina Coast Water District
California Department of Parks and Recreation	Bureau of Land Management (Cooperating Entity)

FORA Staff and Consultant team held All-Permittees Meeting from 9am-12pm, November 20, 2019 at the Soper Field Community Center in Seaside. Staff and consultants presented HCP background and JPA formation information. Stakeholders raised concerns about JPA legal and financial issues, and requested additional information prior to advancing the formation process. Staff and consultants documented questions, identified key new content needs, and have scheduled JPA finance meetings with stakeholders in mid-December.

Several entities have suggested a more robust and focused engagement process in order to resolve the outstanding funding and governance concerns. At its 12/4/2019 meeting, the FORA Executive Committee suggested Board deliberation on the potential of creating a Habitat Working Group or other semi-formal mechanism (with a weekly or bi-weekly meeting schedule). This group would convene interests, with support from FORA, RGS, and/or jurisdiction staff to assist in resolving this 2018 Transition Plan Implementation objective.

FORA Staff is also advancing the following transition items:

- a) Local Agency Formation Commission of Monterey County-FORA Liability Agreement;
- b) Final FY 19/20 Capital Improvement Program;
- c) Environmental Protection Agency (“EPA”)/Department of Toxic Substances Control (“DTSC”) /Army – FORA ESCA successor acceptance process; and
- d) Public Employee Retirement System obligations and FORA projected staffing.

FISCAL IMPACT:

Reviewed by FORA Controller 

Funding for staff time and RGS Consultants included in the approved FORA budget.

COORDINATION:

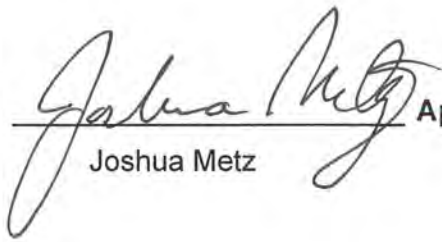
Executive Officer.

ATTACHMENTS:

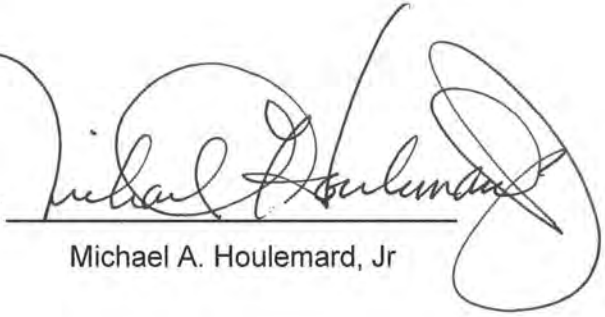
Attachment A: DRAFT Multi-Agency TPIA Status

Attachment B: ESCA Parcels Transfer Status Chart

Prepared by


Joshua Metz

Approved by


Michael A. Houlemard, Jr

IMPLEMENTING AGREEMENT

This Implementing Agreement (this “Agreement”) is dated for reference purposes _____, 2019 and is entered into by and among:

- (a) County of Monterey (“County”),
- (b) City of Marina (“Marina”),
- (c) City of Seaside (“Seaside”),
- (d) City of Del Rey Oaks (“Del Rey Oaks”), and
- (e) City of Monterey (“Monterey” and collectively with County, Marina, Seaside, and Del Rey Oaks, the “Jurisdictions”).

RECITALS

A. The Fort Ord Reuse Authority (“FORA”) was established pursuant to the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.* and referred to herein as the “FORA Act”) as a regional agency to, among other things, plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army (the “Army”) to various municipalities and other public entities (including the Jurisdictions) or their designees.

B. FORA acquired portions of the former Fort Ord from the Army under an Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000 (the “EDC Agreement”). FORA has delivered to each of the Jurisdictions a complete copy of the EDC Agreement as executed and including all amendments and attachments.

C. Section 67700(a) of the FORA Act provides that the FORA Act will become inoperative, at the latest, on June 30, 2020. Concurrently with the FORA Act becoming inoperative, FORA will dissolve (“FORA’s Dissolution”).

AGREEMENT

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:

1.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

- 1.1** “**Agreement**” means this Implementing Agreement.
- 1.2** “**Army**” means the United States Army.
- 1.3** “**County**” means the County of Monterey, a California general law county.

1.4 **“Del Rey Oaks”** means the City of Del Rey Oaks, a California general law city.

1.5 **“EDC Agreement”** means the Economic Development Conveyance Memorandum of Agreement between FORA and the Army dated June 20, 2000.

1.6 **“FORA”** means the Fort Ord Reuse Authority, a public corporation of the State of California.

1.7 **“FORA Act”** means the Fort Ord Reuse Authority Act (California Government Code Section 67650 *et seq.*).

1.8 **“FORA’s Dissolution”** means the cessation of FORA’s existence when the FORA Act becomes inoperative, which is anticipated to occur on June 30, 2020.

1.9 **“HCP”** means the Fort Ord Multispecies Habitat Conservation Plan for the former Fort Ord military installation.

1.10 **“HCP Cooperative”** means the Fort Ord Regional Habitat Cooperative formed pursuant to a Joint Exercise of Powers Agreement entered into by and between the Jurisdictions, among others.

1.11 **“HMAs”** has the meaning given in Section 4.0.

1.12 **“Jurisdiction”** means individually County, Marina, Seaside, Del Rey Oaks, or Monterey. County, Marina, Seaside, Del Rey Oaks, and Monterey may collectively be referred to as the **“Jurisdictions.”**

1.13 **“Jurisdiction Property”** has the meaning given in Section 3.1.

1.14 **“Marina”** means the City of Marina, a California charter city.

1.15 **“Monterey”** means the City of Monterey, a California charter city.

1.16 **“Party”** means individually one of the Jurisdictions. The Jurisdictions may collectively be referred to as the **“Parties.”**

1.17 **“Sale or Lease Proceeds”** means the consideration received by the Jurisdiction when leasing or selling a portion of the Jurisdiction Property owned by the Jurisdiction, less any direct leasing expenses or direct sale expenses.

1.18 **“Seaside”** means the City of Seaside, a California general law city.

2.0 WATER ALLOCATIONS

Until such time as such allocations may be amended as provided herein, the Jurisdictions agree to honor and abide by the allocations of potable and recycled water set forth in Exhibit A attached hereto, subject to compliance with all applicable laws including, but not limited to, the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) and the Sustainable Groundwater Management Act (Water Code Section 10720 *et seq.*). The Parties shall meet and confer in good faith to cooperatively develop one or more agreements between each Jurisdiction and Marina Coast Water District regarding the provision of potable and recycled water services and to establish parameters for amending the allocations in the future, as may be appropriate.

3.0 ROADWAY PROJECTS

3.1 Local Roads. After FORA's Dissolution, no further funding will be available from FORA for local road improvement projects that may be required to mitigate the adverse impacts of development projects on property at the former Fort Ord owned by or subject to the control or land use approval authority of any of the Jurisdictions (each a "Jurisdiction Property"). Accordingly, if any development project on one but not more than one Jurisdiction Property requires mitigation in the form of a roadway project or otherwise, the Jurisdiction undertaking or approving the development project shall have sole responsibility to arrange for the funding of all required mitigation measures from such Jurisdiction's own resources, from the project developer(s), or from grants or other resources available to such Jurisdiction.

3.2 Regional Roads. It is anticipated that effective July 1, 2020, the Transportation Agency for Monterey County will be responsible for the collection of Regional Development Impact Fees for the FORA Zone (Zone 5). Thereafter, for developments within the boundaries of the former Fort Ord that are entitled but not required to pay Community Facilities District charges after FORA's Dissolution, the Jurisdiction with permitting authority over such development will either assess the Regional Development Impact Fee or collect a comparable development impact fee equal to the amount of the Regional Development Impact Fee and remit that amount to the Transportation Agency for Monterey County as mitigation for impacts to regional roads.

4.0 HABITAT CONSERVATION PLAN

After FORA's Dissolution, no further funding will be available from FORA for implementation of the Fort Ord Multispecies Habitat Conservation Plan ("HCP"). All funds accumulated before FORA's Dissolution for the purpose of habitat mitigation shall be transferred in the following order of priority. If before April 1, 2020 a Habitat Conservation Plan Cooperative (the "HCP Cooperative") has been established, all the habitat mitigation funds held by FORA immediately prior to FORA's Dissolution shall be transferred in their entirety to the HCP Cooperative for use in connection with the HCP being administered by the HCP Cooperative. If by April 1, 2020 no HCP Cooperative is in existence, then FORA will prepare a program to distribute the habitat mitigation funds to one or more recipients for long-term management of the area located within the habitat reserve areas, the habitat corridors, and the restricted development

parcels pursuant to the revised “Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord” issued by the U.S. Army Corps of Engineers in April 1997 (collectively, the “HMAs”).

5.0 ORDNANCE

The Jurisdictions shall cooperate fully with the Army’s investigation, characterization, and remediation of potential ordnance and explosives impediments to allow the reuse of the Jurisdiction Property. The Jurisdictions’ cooperation will specifically include recognizing, effective immediately after FORA’s Dissolution, the Army’s new designated agency and entering into any new agreement(s) with the Army as may be necessary to appropriately implement the change of designated agency.

6.0 RECORDS RETENTION AND MANAGEMENT

All FORA records, including personnel files, documents, and meeting records will be transferred to County for retention and management.

7.0 LAND TRANSFER REPORTING

At least annually, commencing with the year in which FORA transfers or transferred a respective parcel of Jurisdiction Property to the ownership of the respective Jurisdiction and ending seven (7) years thereafter, the recipient Jurisdiction shall submit to County, serving as the Economic Development Corporation Successor and Local Reuse Authority Successor, a written report of the Jurisdiction’s uses of all Sale or Lease Proceeds received by the Jurisdiction in connection with its ownership of such parcel of Jurisdiction Property, to the extent that such information has not previously been provided to FORA. The Jurisdiction shall have forty-five (45) days from the anniversary of each transfer of ownership to prepare and submit its report to County, which will promptly thereafter, as the designated reporting agency, submit the same to the Army.

8.0 COMMUNITY FACILITIES DISTRICT REVENUES

Immediately prior to FORA’s Dissolution, any then unexpended community facilities district revenues and unencumbered other fund balances shall be transferred to County. The County of Monterey shall promptly thereafter disburse those community facilities district revenues and other fund balances to the Jurisdictions in such amounts and in such reasonable manner as the Jurisdictions may collectively agree.

9.0 OUTSTANDING DEBT

If FORA has any remaining outstanding debt at the time of FORA’s Dissolution, property tax revenues shall continue to be paid to County in accordance with subparagraph (D) of paragraph (1) of subdivision (c) of Section 33492.71 of the Health and Safety Code in an amount necessary to pay the principal and interest or other amounts on that debt. Upon the retirement of the debt, any remaining property tax revenues shall be transferred to the auditor-controller of County for appropriate distribution. County may, before disbursing revenues as provided in this section,

deduct an amount equal to the reasonable cost of administering this section out of the remaining revenues to be disbursed.

10.0 SEVERABILITY

If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

11.0 DISPUTE RESOLUTION

If any dispute arises between the Parties under this Agreement, the Parties shall resolve the dispute in accordance with this Section 11.

11.1 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 Party all the information in its possession that is relevant to the dispute, so that both Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after fifteen (15) days from the initial demand, either Party may demand mediation.

11.2 Mediation. If meeting and conferring do not resolve the dispute, 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. Either 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 Parties.

11.3 Arbitration. If the dispute has not been resolved by mediation, and if both Parties wish to pursue arbitration, then the dispute shall be submitted to arbitration. The decision of the arbitrator or arbitrators shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either Party files an action in court.

(i) Any potential arbitrator must affirmatively disclose all of his or her potential conflicts of interest, and a description of the nature of his or her past and current law practice (if applicable), before the Parties select the arbitrator. A Party may disqualify any potential arbitrator whom the Party subjectively perceives to have a conflict or bias. Any potential arbitrator must be a qualified professional with expertise in the area that is the subject of the dispute, unless the Parties otherwise agree. The Parties shall jointly select a single arbitrator.

(ii) Before commencement of the arbitration, the Parties may elect to have the arbitration proceed on an informal basis; however, if the Parties are unable so to agree, then the arbitration shall be conducted in accordance with Code of Civil Procedure Section 1280 *et seq.*, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, the requirements of subsection (iii) below shall apply.

(iii) The arbitrator must issue a written decision setting forth the legal basis of the decision, making findings of all relevant facts and stating how the law was applied to the found facts, and the decision must be consistent with and apply the law of the State of California.

11.4 Attorneys' Fees and Costs. Should the dispute of the Parties not be resolved by negotiation or mediation, and in the event it should become necessary for either Party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable cost and reasonable attorneys' fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party.

11.5 Judicial Resolution. If the dispute is not or cannot be resolved by mediation, and if there is not agreement between the Parties to pursue arbitration, then either Party may commence an action in the Superior Court of Monterey County. The prevailing Party, in addition to any other remedy at law or in equity available to such Party, shall be awarded all reasonable costs and reasonable attorney's fees, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing Party. For purposes this Section 11.5, "prevailing Party" shall include a Party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

12.0 MISCELLANEOUS

12.1 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. No other statement or representation by any employee, officer, or agent of any Party, which is not contained in this Agreement, shall be binding or valid.

12.2 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

12.3 Modifications. This Agreement shall not be modified except by written instrument executed by and between the Jurisdictions.

12.4 Interpretation. This Agreement has been negotiated by and between the representatives of all Parties, all being knowledgeable in the subject matter of this Agreement, and each Party had the opportunity to have the Agreement reviewed and drafted by their respective legal counsel. Accordingly, any rule of law (including Civil Code Section. 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.

12.5 Relationship of the Parties. Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the Parties.

12.6 Waiver. No waiver of any right or obligation of any Parties hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by any Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

12.7 Further Assurances. The Parties shall make, execute, and deliver such other documents, and shall undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Agreement.

12.8 Days. As used in this Agreement, the term “days” means calendar days unless otherwise specified.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth beside the signature of each, the latest of which shall be deemed to be the effective date of this Agreement.

Dated: _____, 2019

COUNTY OF MONTEREY

By: _____
County Administrative Officer

Approved as to form:

By: _____
County/Deputy County Counsel

Dated: _____, 2019

CITY OF MARINA

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF SEASIDE

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF DEL REY OAKS

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Dated: _____, 2019

CITY OF MONTEREY

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

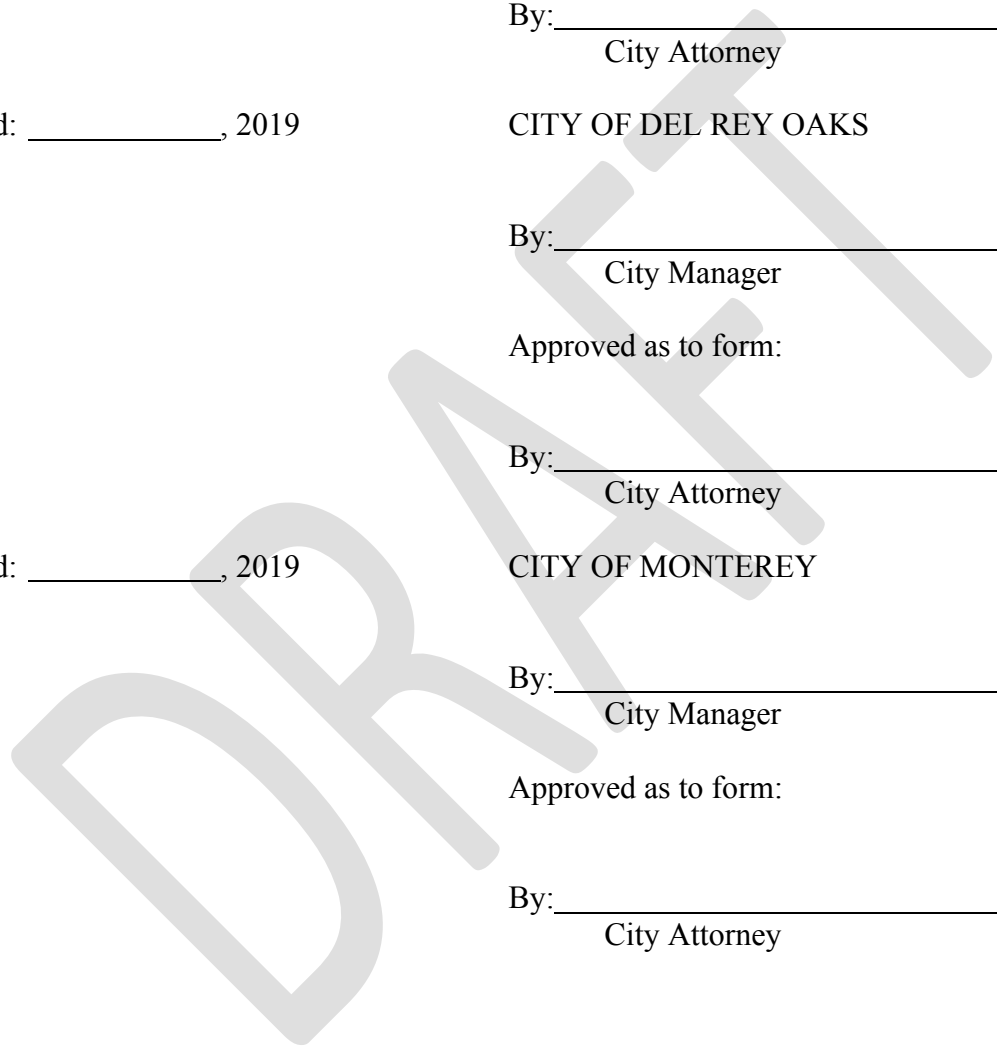


EXHIBIT A

Water Allocations

Allocations			
Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB	1,035.0	87.0	1,122.0
Del Rey Oaks	242.5	280.0	522.5
State Parks and Rec.	44.5	0.0	44.5
U.S. Army	1,562.0	0.0	1,562.0
UCMBEST	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
TOTAL ALL (ORD)	6,600.0	1,427.0	8,027.0

Footnote to table: The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

Footnote to Army's Potable Groundwater Allocation: The amount shown for the Army is the Army's reserved right.

Footnote to City of Seaside's Potable Groundwater Allocation: Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of now Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use jurisdiction. MCWD has requested FORA to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside's groundwater allocation should be reduced by 38 AFY and the Army's reserved amount should be increased by 38 AFY.



Out- Deed Name	Jurisdiction	Parcel Number	Army Parcel Name	Army/FORA In-Deed	Finish Survey Mods - ARCADIS	DTSC Completes CRUP Amendment	CRUP Recorded	State Remedial Completion Concurrence - DTSC	BRAC CERCLA Warrantee & Deed Amendment	FORA Property Transfer Notification Letters	FORA Out-Deeds Ready to Sign
ESCA FOSET-5 CERCLA Warrantee & Deed Notices						7 weeks to complete after survey's done.	1 week after CRUP Amendment complete	1 week after CRUPs completed.	8 weeks from FORA CERCLA Warrantee/Deed Amendment Request	1 week after Surveys modifications completed	4 weeks after Warrantee & Deed Amendment Complete
ESCA CSUMB Out-Deed	CSUMB	51.3.2	Expansion Area 3B (CSUMB Off-Campus)	DACA05-9-07-507	Complete	Complete	Complete	Complete	Request made September 2019	Notification made October 2019	Dec-19
ESCA Seaside Out-Deed	Seaside	E18.1.3	Housing future	DACA05-9-07-506	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019 - Scheduled to be issued 11/14/19	Notification made October 2019	Jan-20
		E18.4	Water Tank								
		E20c.2	Housing Future								
		E23.1	ROW / retail								
		E23.2	ROW / Housing future								
		E24	ROW / Housing future								
ESCA MPC Out-Deed	MPC	E21b.3	Housing Single Family	DACA05-9-07-508	Oct-19	Dec-19	Dec-19	Dec-19	Request made October 2019	Notification made October 2019	Jan-20
		E38	MPC Reserve								
		E39	MPC Reserve								
		E41	MPC Habitat Reserve								
		E42	MPC Habitat Reserve								
		F1.7.2	BLM Parcel H / MOUT								
		L23.2	Habitat / field study area								
		E40	Range Extension								
ESCA County Out-Deed	County	E11b.6.1	Habitat Reserve	DACA05-9-07-505	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
		E11b.7.1.1	Habitat Reserve								
		E11b.8	Development / mixed use								
		E19a.1	County Development								
		E19a.2	Habitat Reserve								
		E19a.4	Habitat Reserve / County								
		L20.18	ROW / Eucalyptus Road								
		L20.19.1.1	ROW / Barloy Canyon								
		L20.3.1	Wolf Hill								
		L20.3.2	ROW / Wolf Hill								
		L20.5.1	Lookout Ridge								
		L20.5.2	ROW / Lookout Ridge								
		L20.5.3	Lookout Ridge								
		L20.5.4	South Boundary Park - Barloy Canyon Road -								
		L20.8	Barloy Canyon Road -								
		ESCA Del Rey Oaks Out-Deed	Del Rey Oaks								
L20.13.3.1	ROW / South Boundary										
ESCA Monterey Out-Deed	Monterey	E29.1	Business Park / Light	DACA05-9-07-501	Nov-19	Jan-20	Jan-20	Feb-20	Jan-20	Dec-20	Feb-20
ESCA MRPMD Out-Deed	MRPMD - Parks	L6.2	Frog Pond	DACA05-9-07-504	Nov-19	Jan-20	Jan-20	Jan-20	Jan-20	Dec-19	Feb-20
Other Fort Ord Property Transfers											
County Landfill In & Out-Deeds	County	E8a.1.1	Landfill	Deed Needed	N/A	N/A	Unknown	N/A	N/A	N/A	After 2020
		E8a.2	Landfill carrot								
County FOSET 5 Out-Deed	County	E4.7.2	Imjin Parkway Gas Extraction	DACA05-9-09-505	N/A	Needs Kutack Rock Out-Deed Created	N/A	N/A	Complete	N/A	Jan-20
County FOST 11 In & Out-Deeds	County	L2.3	MST - North Gigling	FORA reviewing Deed	N/A	Kutak Rock modifying CRUP	N/A	N/A	N/A	N/A	Feb-20
		L2.4.1	MST - North Gigling								
Seaside E20c.1 In & Out-Deeds	Seaside	E20c.1	Housing Future	Deed Needed	N/A	Army and Kutak Rock developing deeds	N/A	N/A	N/A	2020	Unknown
Seaside L36 In & Out-Deeds	Seaside	L36	Rescinded Diocese	FOST 13 & Deed Needed	Army finishing Environmental - FOST 13	Army and Kutak Rock developing deeds	N/A	N/A	N/A	N/A	Feb-20

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Attachment B

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**New Ord Community Water and Wastewater Services Agreement
between City of _____ and Marina Coast Water District**

This Agreement is entered into as of the Effective Date of _____, 2019, by and between _____ (“City”), and the Marina Coast Water District (“MCWD”), with reference to the following facts:

Recitals

A. On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and be allocated 6,600 AFY of groundwater for use on Fort Ord lands, and the U.S. Government paid MCWRA a \$7,400,000 annexation fee.

B. The Fort Ord Reuse Authority (FORA) is a regional agency established under Government Code Sections 67650, et seq., to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army to the governing local jurisdictions pursuant to the Fort Ord Reuse Plan adopted under Government Code Section 67675

C. Under the 1998 Water/Wastewater Facilities Agreement between FORA and Marina Coast Water District (MCWD), MCWD is the exclusive provider of water and wastewater collection services within the former Fort Ord, now designated as MCWD’s Ord Community Service Area, except that MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks, which are served by the Seaside County Sanitation District. Paragraph 9.3, Term, of the 1998 Agreement as amended states, “This Agreement shall have a term coincident with the legal existence of FORA.” FORA’s legal existence is scheduled to terminate on June 30, 2020, pursuant to Government Code Section 67700.

D. On October 23, 2001, the U.S. Government through the Secretary of the Army made an economic development conveyance by quitclaim the following assets to FORA and the next day on October 24, 2001, FORA deeded those very same assets to MCWD: (1) all of Fort Ord’s water and sewer infrastructure; (2) under the 1993 Fort Ord Annexation Agreement, 4,871 AFY of the Army’s 6,600 AFY of MCWRA groundwater allocation with the Army reserving 1,729 AFY; and (3) 2.22 MGD of the Army’s prepaid wastewater treatment capacity under the Army-MRWPCA Agreement.

E. FORA and MCWD approved the recycled/desalinated two-component recommendation to implement the Fort Ord Water Augmentation Program (Hybrid Alternative) on June 10, 2005, at a joint meeting of the Boards. MCWD, Monterey Regional Water Pollution Control Agency (MRWPCA), and Monterey County Water Resources Agency agreed that 1,427 AFY of recycled water is allocated to the Hybrid Alternative.

F. The Base Reuse Plan has a water augmentation target of 2,400 AFY. The Fort Ord Water Augmentation Program costs were to be covered by funds collected under FORA’s Community

Development Fund taxes; however, FORA is scheduled to terminate on June 30, 2020, so such augmentation costs will need to be collected by MCWD.

G. On April 22, 2019, the Local Agency Formation Commission of Monterey County (LAFCO) on a 9-0 vote approved MCWD application to annex those lands within MCWD's Ord Community Service Area, which currently receive MCWD's services or which has received land use approvals from the applicable land use jurisdiction. Those lands within the Ord Community Service Area that are served by the Seaside County Sanitation District (SCSD) were not annexed because wastewater collection services are provided by SCSD and not MCWD. Subject to the Monterey County LAFCO annexation approval process, each parcel not included in this annexation and which will be provided both water and sewer collection service by MCWD will be annexed to MCWD when that parcel has received the required land use approvals.

Definitions

- 1998 Agreement shall mean that certain Water/Wastewater Facilities Agreement signed on March 13, 1998, by and between FORA and MCWD.
- Groundwater Action shall mean any final legally binding determination by a court or regulatory or administrative agency having jurisdiction over groundwater that would directly or indirectly change the potable groundwater allocations set forth in Section 1. A regulatory or administrative agency may include, but not be limited to, the State Water Resources Control Board (SWRCB), Regional Water Quality Control Board, Monterey County, Monterey County Water Resources Agency, and any groundwater sustainability agency (GSA) having jurisdiction over the groundwater in question. Groundwater Actions include, but are not limited to, groundwater adjudications conducted in accordance with Code of Civil Procedure Section 830, et seq., protection of groundwater quality pursuant to Water Code Sections 2100 – 2102, GSA actions pursuant to the adopted groundwater sustainability plan for the applicable groundwater subbasin. Groundwater Actions also include the approval of new well permits that pump potable and/or brackish groundwater, which adversely impacts the availability of groundwater for MCWD.
- Land Use Jurisdiction (or LUJ), shall mean a FORA land use jurisdiction that is a party to this Agreement.
- Ord Community Service Area shall mean the area designated in attached Exhibit A within which MCWD provides water, recycled water, and wastewater collection services. Areas within Exhibit A where wastewater collection services are provided by the Seaside County Sanitation District are shown.
- Party or Parties to this Agreement shall mean the City and the Marina Coast Water District.
- SGMA shall mean the Sustainable Groundwater Management Act, Water Code Sections 10720, et seq.

Purpose

The purpose of this Agreement is to recognize the existing rights and obligations of the Parties regarding the provision of potable water, recycled water and, where applicable, sewer collection services by MCWD to each LUJ. Subject to the limitations, restrictions, and funding obligations described in this Agreement, the Parties agree that MCWD intends to offer those services to every LUJ receiving potable groundwater allocations and/or recycled water allocations from FORA pursuant to the Base Reuse Plan on substantially similar terms and conditions as are contained in this Agreement, recognizing that each LUJ has different allocations from FORA and have redevelopment plans specifically tailored for that LUJ.

Key Service Terms

1. The Parties agree with the applicable terms and conditions of the 1993 Fort Ord Annexation Agreement. The Parties agree to the FORA potable and recycled water allocations under the Base Reuse Plan as set forth in FORA resolution 07-01 for potable water and FORA resolution 07-10 for recycled water as follows and as may be amended by FORA prior to its termination (collectively “Allocations”), subject to compliance with all applicable laws including, but not limited to, CEQA and the Sustainable Groundwater Management Act (SGMA), and any Groundwater Action:

Allocations			
Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB	1,035.0	87.0	1,122.0
Del Rey Oaks	242.5	280.0	522.5
State Parks and Rec.	44.5	0.0	44.5
U.S. Army	1,562.0	0.0	1,562.0
UCMBEST	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
TOTAL ALL (ORD)	6,600.0	1,427.0	8,027.0

Footnote to table: The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

Footnote to Army’s Potable Groundwater Allocation: The amount shown for the Army is the Army’s reserved right.

Footnote to City of Seaside’s Potable Groundwater Allocation: Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of now Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use jurisdiction. MCWD has requested FORA to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside’s groundwater allocation should be reduced by 38 AFY and the Army’s reserved amount should be increased by 38 AFY.

2. The Parties agree that the above Potable Groundwater Allocations and Recycled Water Allocations are not guaranteed by MCWD. MCWD will endeavor to supply the respective allocations in accordance with the terms of this Agreement. In addition to Section 4a, Groundwater Action or Actions could result in less than the amount of Potable Groundwater and Recycled Water being available to MCWD to meet the above stated non-Army jurisdictions' allocations.

3. RUWAP Phases 1 through 4.

Phase 1	600 AFY of PWM advanced treated water
Phase 2	827 AFY of PWM advanced treated water
Phase 3	927 AFY of yet to be determined potable and/or recycled water
Phase 4	Additional potable and/or recycled water needed by LUJs

a. Phases 1, 2, and 3 are intended to develop the water supply needed to meet FORA's 2007 Potable and Recycled Water allocations described in Section 1 for Base Reuse Plan redevelopment projects over the next 15 years. Those redevelopment projects are listed in MCWD's 2019 Master Plans. Phase 4 is any additional water needed by MCWD after Phases 1 – 3 to meet water demands within the Ord Community service area.

b. Phase 1 of the Regional Urban Water Augmentation Project ("RUWAP") will provide 600 AFY of Pure Water Monterey ("PWM") advanced treated water. Under the Pure Water Delivery and Supply Project Agreement dated April 8, 2016, as amended, between MRWPCA (now Monterey One Water (M1W)) and MCWD, MCWD will receive up to 600 AFY of advance treated water.

c. When funded and constructed, Phase 2 of the RUWAP will provide 827 AFY, or a total 1,427 AFY of PWM advanced treated water from Phases 1 and 2 for the Ord Community and be allocated in accordance with Section 1 above.

d. Phase 3 of the RUWAP is for 973 AFY, the remaining balance of the 2,400 AFY Water Augmentation Target under the Base Reuse Plan.

e. Phase 4 of the RUWAP would be additional water supplies over and above the 2,400 AFY under Phases 1, 2, and 3. The Phase 4 water sources and projects have yet to be identified, planned, and developed. Uses for this water could include, but are not limited to, water needed to meet increased water demand within the Ord Community service area, for new development, and to firm up and protect Potable Groundwater supplies. Phase 4 projects will most likely be developed to also meet MCWD's Central Marina service area demands and the costs allocated accordingly.

4. MCWD agrees to develop and secure the water supply sources necessary to supply the water for the Potable Groundwater Allocations and the Recycled Water Allocations, subject to compliance with all applicable laws including, but not limited to, CEQA and the Sustainable Groundwater Management Act (SGMA). In the event of a legal, environmental, Groundwater Action, or other cause that limits MCWD's extraction of groundwater to less than the total

Potable Groundwater allocations, MCWD commits to pursuing a replacement water supply in accordance with this Agreement.

a. Any project by MCWD to develop or secure new or replacement water supply sources under this Agreement shall be subject to a process of thorough public review and input and all necessary and appropriate approvals. That process must also include environmental review under CEQA before MCWD may consider approving the project; and the project may require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit, MCWD or any other governmental body to approve or implement any project to develop or secure new water supplies, and they may not do so until environmental review of the project as required under CEQA has been completed. Accordingly, all references to new water supply projects in this Agreement shall mean the proposed project subject to future environmental review and consideration by MCWD. MCWD and any other public agency with jurisdiction over any part of the project shall have the absolute discretion before approving the project to: (i) make such modifications to the project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the project; (iv) balance the benefits of the project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the project.

b. MCWD has rights to all wastewater flows from MCWD wastewater collection system conveyed to M1W for treatment and MCWD is working with M1W to affirm and quantify those rights. Wastewater conveyed by MCWD from MCWD's service areas to M1W can be returned to MCWD's service area as advanced treated recycled water, less treatment losses. MCWD will work with M1W to devise an agreed upon schedule for the recycled water portions of RUWAP Phases 2 and 3 and MCWD commits to use those flows to secure the water supplies necessary to meet the Recycled Water Allocations, new or replacement water, drought reserves, and sustainable groundwater management plans. Under prior agreements, MCWD agreed to allow 300 AFY of Central Marina summer wastewater flows to be used for RUWAP for the benefit of the Ord Community. The parties to this Agreement agree that the Ord Community service area needs to payback or credit the Central Marina service area for the 300 AFY of summer wastewater flows.

c. Any wastewater flows that MCWD has rights to and are surplus to securing the Recycled Water Allocations, Phase 3 recycled water, new or replacement water, drought reserves, and SGMA groundwater sustainability plans will be returned to the land use jurisdiction where the flows were originally derived as an additional new water supply for those jurisdictions under RUWAP Phase 4 or later phases, provided a funding source to develop the new water supply has been secured and the environmental review for the new supply as required under CEQA has been completed. The amount to be returned is the net quantity of treated water (amount of usable water remaining after treatment). The land use jurisdiction that has the right to the surplus flow described in this section shall also have the right to transfer, sell, or lease those rights to another party in this Agreement.

d. MCWD agrees to develop and provide other, additional, new water supplies (other than PWM and potable groundwater) as part of RUWAP Phase 4 or later phases as requested by any party to this Agreement provided a funding source to develop the new water supply has been secured and the environmental review for the new supply as required under CEQA has been completed.

e. The Parties agree to work with the other LUJs for RUWAP Phase 4 and later phases to optimize economies of scale and scope in meeting the needs of all the parties that are participating in the applicable work and the needs of the Central Marina service area.

5. MCWD will not be required to proceed with the development of a new or replacement water supply (a) until a funding source and a rate structure to recover all costs are identified, secured, and approved by MCWD; (b) environmental review of the project as required under CEQA has been completed; and (c) compliance with SGMA and any other applicable law reasonably appear to be achievable.

6. City agrees that MCWD shall have the first right of refusal to any of the Army's potable water allocation or sewer treatment capacity released by the Army. MCWD agrees to reallocate any such additional water on an equitable basis subject to agreement of all of the LUJs, provided that if the LUJs cannot agree, then MCWD will reallocate based upon the then potable water and recycled water allocations, subject to securing a funding source to develop the new water supply and the environmental review for the new supply as required under CEQA has been completed.

7. On the Effective Date of this Agreement, the Parties agree to the following:

a. MCWD has the legal authority to impose capacity charges, water augmentation fees, and water and sewer rates within the Ord Community Service Area. [add citation]

b. FORA shall not have a right to approve or charge any charges, fees, and rates for the water and sewer services to be provided under this Agreement.

c. MCWD will implement new fees on the same date that FORA agrees to end charging fees for Water Augmentation no later than beginning July 1, 2020.

8. New developments within the Ord Community where MCWD will provide both water and wastewater services, the Parties agree that a condition precedent for MCWD to provide those services to any new development not included in MCWD's recent LAFCO-approved Ord annexation application is that the area must request annexation to MCWD as part of the applicable LUJ's approval process for the development. The annexation shall be conducted at no cost to MCWD. If the annexation process is delayed and service is necessary prior to the successful completion of the annexation, MCWD will provide service so long as all required MCWD capacity charges and other MCWD fees are paid.

9. Water User Advisory Committee. The Parties agree that regular coordination meetings will be held between MCWD and the LUJs who sign a New Ord Community Water and Wastewater Services Agreement. As part of the regular coordination process, a "Water User Advisory Committee" ("WUAC") will be established which shall include one staff-level and one elected-level representative from each agency that is party to the new Agreement. The WUAC meetings shall be public meetings and MCWD shall create the bylaws and begin the WUAC meetings within 6 months of the execution of this agreement. The MCWD board shall have final approval over adoption of the bylaws for the WUAC.

10. Rights-of-Way/Easements for MCWD Water and Sewer Infrastructure.

a. City agrees to provide the necessary rights-of-way/easements within its jurisdictional boundaries to MCWD without charge to MCWD in order for MCWD to provide potable, recycled water, and/or sewer collection services to customers within that Party's jurisdictional boundaries. Water Code Section 31060.

b. In accordance with Government Code Section 6103.6, City may recover staff time costs to process the rights-of-way/easements and to inspect any MCWD right-of-way work within its jurisdictional boundaries.

c. Where a right-of-way or easement is oversized to accommodate a larger pipeline or other infrastructure to serve customers outside of the Party's jurisdictional boundaries, then City may receive reasonable compensation for the oversizing.

THE FOLLOWING SECTIONS WILL BE REVIEWED AND COMMENTED UPON SEPARATELY BY EACH PARTY'S ATTORNEYS AND THEN DISCUSSED.

Dispute Resolution

11. Dispute Resolution

a. Dispute resolution procedure. If any dispute arises between the Parties as to the proper interpretation or application of this Agreement, the Parties shall resolve the dispute in accordance with this section.

b. Duty to meet and confer. If any dispute under this Agreement arises, the Parties shall first meet and confer, in an attempt to resolve the matter. Each Party shall make all reasonable efforts to provide to the other Party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

c. Mediation and Binding Arbitration.

(1) If the dispute is not resolved within sixty (60) days after the first meeting under Subsection 11.b, then any Party may notify the other Party or Parties that the notifying Party elects to submit the dispute to mediation. If the other Parties agree to submit the dispute to mediation, then the Parties will jointly select a mediator. The terms of mediation shall be set by agreement of the Parties and the mediator.

(2) If the dispute is not resolved by meeting and conferring, and mediation does not occur or is unsuccessful, any Party may serve the other Party or Parties with a demand and request for binding arbitration by a single neutral arbitrator. The demand must set forth the nature of the dispute and the claim or relief sought.

(3) If any other Party to the dispute does not agree to submit the dispute to binding arbitration, then the other Party shall serve written notice of that to the Party requesting binding arbitration. Alternatively, the Parties may agree to not submit the dispute to binding arbitration.

(4) If the Parties agree to submit the matter to binding arbitration, the Parties will jointly select a single arbitrator. If the Parties cannot agree on a person to serve as the arbitrator, the dispute shall be submitted to one neutral arbitrator selected from a list of at least three neutral arbitrators proposed by mutual agreement of the Parties. Each candidate shall have at least five (5) years' experience with the same or similar type disputes as the dispute or disputes at issue, unless the Parties agree otherwise. The Parties agree to select the arbitrator by alternate strikes. The Party who served the request for binding arbitration shall strike first. If the Parties are unable to agree on a single arbitrator, then the Parties shall request the Presiding Judge of the Monterey County Superior Court to appoint an arbitrator who has the above minimum required experience. The cost of the arbitrator shall be shared equally among the Parties. Unless otherwise agreed by the Parties, the arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures ("Rules"), but not necessarily under the auspices of JAMS. The Parties agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery will be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein unless the Parties agree otherwise. The Parties hereby consent to the jurisdiction of the courts of Monterey County for the confirmation, correction or vacation of any arbitration award. The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator will have no power to award punitive damages or other damages not measured by the Party's actual damages against any Party. This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to arbitrate sufficient to vest jurisdiction in a court with respect to that issue. The arbitrator's award will be deemed final, conclusive and binding to the fullest extent allowed by California law, and may be entered as a final judgment in court.

12. Lawsuit in lieu of Binding Arbitration. If all of the disputing Parties do not agree to submit the dispute to binding arbitration, then any disputing Party may file a lawsuit in a court with jurisdiction over the dispute within ninety (90) calendar days of the date of the notice or agreement under Subsection 11.c.(3) above. Nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394.

General Provisions

13. **Assignment.** No Party may sell, transfer, or assign any of its right or interest under this Agreement, in whole or in part, without prior written consent of the other Party or Parties.

14. **Amendment.** This Agreement or any provision hereof may be changed, waived, or terminated only by a statement in writing signed by the Party against which such change, waiver or termination is sought to be enforced.

15. **No Waiver.** No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

16. **Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

17. **Entire Agreement.** This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

18. **Choice of Law.** This Agreement will be construed in accordance with the laws of the State of California.

19. **Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

20. **Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

21. **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

If delivered to (list for each party to this Agreement):

If delivered to MCWD:

22. No Third-Party Beneficiaries. Except for the Parties and their respective successors and assigners, nothing in this Agreement, whether express or implied, is intended to confer any rights on any person or entity whatsoever.

23. No Breach of Other Agreements. Each Party warrants that the Party's execution and performance of this Agreement will not result in the breach of any other agreement to which that Party is a party, or to which that Party is otherwise subject or bound.

24. No Party Drafter. No Party to this agreement shall be considered its drafter. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

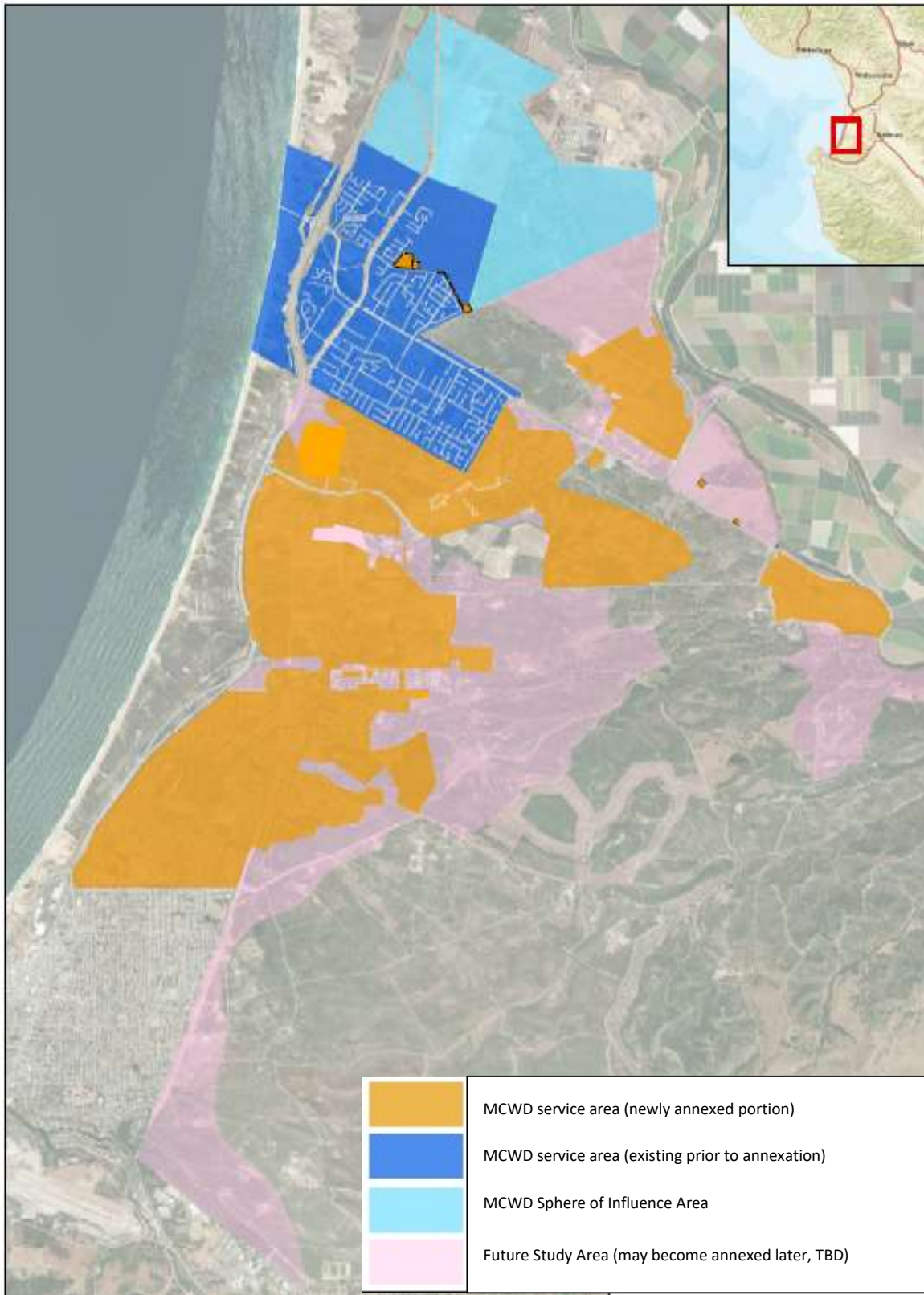
25. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties.

IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

(City Name)

Marina Coast Water District

Exhibit A: Ord Community Service Area **[need different map]**



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